HEARINGS RELATING TO H.R. 15626, H.R. 15649, H.R. 16613, H.R. 16757, H.R. 15018, H.R. 15092, H.R. 15229, H.R. 15272, H.R. 15336, and H.R. 15828, AMENDING THE SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

PART 1

HEARINGS

BEFORE THE

COMMITTEE ON UN-AMERICAN ACTIVITIES

HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

SECOND SESSION

APRIL 30, MAY 1, 2, AND 22, 1968

(INCLUDING INDEX)

Printed for the use of the
Committee on Un-American Activities

U.S. GOVERNMENT PRINTING OFFICE

94-756 O WASHINGTON : 1968

COMMITTEE ON UN-AMERICAN ACTIVITIES

UNITED STATES HOUSE OF REPRESENTATIVES

EDWIN E. WILLIS, Louisiana, *Chairman*

WILLIAM M. TUCK, Virginia	JOHN M. ASHBROOK, Ohio
JOE R. POOL, Texas	DEL CLAWSON, California
RICHARD H. ICHORD, Missouri	RICHARD L. ROUDEBUSH, Indiana
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FRANCIS J. MCNAMARA, *Director*

CHESTER D. SMITH, *General Counsel*

ALFRED M. NITTLE, *Counsel*

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(Appendix in part 2)

The House Committee on Un-American Activities is a standing committee of the House of Representatives, constituted as such by the rules of the House, adopted pursuant to Article I, section 5, of the Constitution of the United States which authorizes the House to determine the rules of its proceedings.

RULES ADOPTED BY THE 90TH CONGRESS

House Resolution 7, January 10, 1967

RESOLUTION

Resolved, That the Rules of the House of Representatives of the Eighty-ninth Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, be, and they are hereby, adopted as the Rules of the House of Representatives of the Ninetieth Congress * * *

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RULE X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress,

* * * * * * *

(r) Committee on Un-American Activities, to consist of nine Members.

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RULE XI

POWERS AND DUTIES OF COMMITTEES

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18. Committee on Un-American Activities.

(a) Un-American activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * * * *

27. To assist the House in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the House shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the House by the agencies in the executive branch of the Government.

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HEARINGS RELATING TO H.R. 15626, H.R. 15649, H.R. 16613, H.R. 16757, H.R. 15018, H.R. 15092, H.R. 15229, H.R. 15272, H.R. 15336, AND H.R. 15828, AMENDING THE SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

Part 1

TUESDAY, APRIL 30, 1968

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

PUBLIC HEARINGS

A subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10:10 a.m., in Room 311, Cannon House Office Building, Washington, D.C., Hon. Edward E. Willis (chairman) presiding.

(Subcommittee members: Representatives Edwin E. Willis, of Louisiana, chairman; William M. Tuck, of Virginia; John C. Culver, of Iowa; John M. Ashbrook, of Ohio; and Albert W. Watson, of South Carolina.)

Subcommittee members present: Representatives Willis, Culver, and Ashbrook.

Staff members present: Chester D. Smith, general counsel, and Alfred M. Nittle, counsel.

The CHAIRMAN. The committee will come to order.

We meet today to receive the views of Members of Congress, representatives of the executive branch of the Government, and other interested persons and organizations with respect to a number of related bills which would amend the Subversive Activities Control Act of 1950. These bills include H.R. 15626 and bills identical to it, H.R. 15649, H.R. 16613, and H.R. 16757; H.R. 15018 and bills identical to it, H.R. 15092, H.R. 15229, and H.R. 15272; H.R. 15336; and sections 203 and 204 of H.R. 15828. These bills have been sponsored by 45 members of the House of Representatives.

All of these bills include provisions designed to remedy a Supreme Court decision of December 11, 1967, in the case of *United States* v. *Eugene Frank Robel*, which voided section 5(a)(1)(D) of the Subversive Activities Control Act of 1950.

That section of the act made it unlawful for any member of a "Communist-action organization," with knowledge or notice that such organization is registered or that there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, "to engage in any employment in any defense facility."

The Court held the section void for "overbreadth" and hence unconstitutionally abridging the "right of association" protected by the first amendment.

In response to the *Robel* decision some of the bills before us repeal the penal provisions of section 5(a)(1)(D) while others retain them. In the former category are H.R. 15018 and bills identical to it.

The remaining bills before us retain the penal provisions of that section, but amend its provisions in various ways, in an effort to comport with the expressions of the Court in the *Robel* case.

However, several bills in both categories—H.R. 15626, H.R. 15018, and bills identical to them—authorize the President to institute a personnel security clearance program to bar certain described individuals from employment in "defense facilities" as that term is so defined in the bills.

With the exception of H.R. 15626 and bills identical to it, all of the bills confine themselves principally to amendments designed to cope with the *Robel* case.

On the other hand H.R. 15626 and bills identical to it are not limited to remedying the *Robel* decision. They have the additional purposes of giving express congressional sanction for the institution of an industrial security clearance program for the protection of classified information released to United States industry or any facility in the United States, to clarify the position of Congress with respect to issues raised in the Supreme Court decision *Greene* v. *McElroy*, 360 U.S. 474 (1959), and a decision of the United States District Court for the Northern District of California, *Shoultz* v. *Secretary of Defense*, of February 9, 1968.

They also amend the Magnuson Act to give express congressional authorization for the institution of a personnel security program for access to vessels, harbors, ports, and waterfront facilities to remedy a deficiency in this act revealed by the Supreme Court in *Schneider* v. *Commandant, United States Coast Guard*, decided January 16, 1968.

Moreover, the bills H.R. 15626 and those identical to it include detailed provisions to strengthen the administration and enforcement of our security programs, involving defense facilities, the release of classified information, and the security of vessels, ports, harbors, and waterfront facilities.

The provisions authorize specific investigation, hearing, and review procedures. They include provisions relating to the subject matter of inquiries, the cross-examination and confrontation of witnesses, the issuance of compulsory process for attendance of witnesses, the granting of immunity for compelled testimony, reimbursement to persons for loss of earnings, and the regulation of the jurisdiction of the courts.

(The order of appointment of the subcommittee follows:)

APRIL 23, 1968.

TO: Mr. FRANCIS J. MCNAMARA,
Director, Committee on Un-American Activities.

Pursuant to the provisions of the law and the Rules of this Committee, I hereby appoint a subcommittee of the Committee on Un-American Activities, consisting of Honorable William M. Tuck, Honorable John C. Culver, Honorable John M. Ashbrook, and Honorable Albert W. Watson, as associate members, and myself, as Chairman, to conduct hearings in Washington, D.C., commencing on or about April 30, 1968, and/or at such other times thereafter and places as said subcommittee shall determine, as contemplated by the resolution adopted by the Committee on the 19th day of March, 1968, authorizing hearings H.R. 15626 and related bills, and other matters under investigation by the Committee.

Please make this action a matter of Committee record.
If any member indicates his inability to serve, please notify me.
Given under my hand this 23rd day of April, 1968.

/s/ Edwin E. Willis,
EDWIN E. WILLIS,
Chairman, Committee on Un-American Activities.

The CHAIRMAN. Copies of the bill before us will now be inserted in the record, together with a summary of the court decisions to which I have referred. The full text of the court decisions will be inserted in the appendix. (See pp. 1569–1676.)

(The documents referred to follow:)

90TH CONGRESS
2D SESSION

H. R. 15626

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1968

Mr. WILLIS (for himself, Mr. ABERNETHY, Mr. ABBITT, Mr. ASHMORE, Mr. BOGGS, Mr. BURLESON, Mr. COLMER, Mr. DORN, Mr. EDWARDS of Louisiana, Mr. EVERETT, Mr. FASCELL, Mr. FISHER, Mr. GETTYS, Mr. HÉBERT, Mr. HENDERSON, Mr. ICHORD, Mr. LONG of Louisiana, Mr. MCMILLAN, Mr. PASSMAN, Mr. POAGE, Mr. POOL, Mr. RARICK, Mr. RIVERS, Mr. TUCK, and Mr. WAGGONNER) introduced the following bill; which was referred to the Committee on Un-American Activities

[H.R. 15649, introduced by Mr. Baring on February 28, 1968; H.R. 16613, introduced by Mr. Ashbrook on April 11, 1968; and H.R. 16757, introduced by Mr. Buchanan on April 24, 1968, are identical to H.R. 15626.]

A BILL

To amend the Subversive Activities Control Act of 1950 to authorize the Federal Government to deny employment in defense facilities to certain individuals, to protect classified information released to United States industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Subversive Activities Control Act of 1950 is amended as follows:

(1) Paragraph (7) of section 3 of such Act is amended to read as follows:

I

"(7) The term 'facility' means any manufacturing, producing or service establishment, enterprise or legal entity, any plant, factory, industry, public utility, mine, laboratory, educational institution, research organization, railroad, airport, pier, waterfront installation, vessel, aircraft, vehicle, or any part, division, department, or activity of any of the foregoing. The term 'defense facility' means any facility designated as such pursuant to section 5 (b)."

(2) Section 5 (a) (1) of such Act is amended—

(A) by striking out clauses (C) and (D) and inserting in lieu thereof the following:

"(C) if such organization is a Communist-action organization, to engage in any employment in any defense facility, with knowledge or notice of its designation as a defense facility; or"; and

(B) by redesignating clause (E) as clause (D).

(3) Section 5 (b) of such Act is amended to read as follows:

"(b) Under such regulations (which shall include procedures for administrative review) as shall be prescribed by the President, the Secretary of Defense is authorized and directed to designate as a defense facility any facility—

"(1) engaged in classified military projects;

"(2) engaged in the fabrication or assembly of weapons, weapons or defense systems, missiles, rockets,

projectiles, ammunition, explosives, military aircraft, United States naval vessels, armed vehicles, specialized vehicles, and their subassemblies or components;

"(3) producing common components, intermediates, basic materials and raw materials, which are essential and sensitive, or essential and in limited supply;

"(4) engaged in laboratory research significant to the national defense;

"(5) significantly engaged in the transportation of military personnel and supplies; or

"(6) providing essential or sensitive communications, repair and warehousing services, gas, water, and electric utilities for the foregoing production or services;

and whose disruption by an act of sabotage, espionage, or other act of subversion would directly impair the military effectiveness of the United States, or capabilities of the United States in the production of essential defense materials and services, or would endanger the security of military personnel. The Secretary shall promptly notify the management, and employees or employee representatives, of any facility which he proposes to designate a defense facility, of the right of the management, and such employees or employee representatives, to oppose such designation by written objection and oral argument. Nothing in this section shall be construed to require the Secretary to disclose in-

formation which he determines will impair the national interest or security. In the absence of objection to the proposed designation or upon a final determination in favor of such designation, the Secretary of Defense shall immediately cause to be posted, in such place or places within or upon the premises of such facility as shall be likely to give knowledge of such designation to all employees of, and to all applicants for employment in, such facility, a conspicuous notice of the designation of such facility, and the applicability of the prohibitions of section 5 (a) (1) (C). Upon the request of the Secretary, the management of any facility so designated, shall require each employee of, or any applicant for employment in, such facility, or any part thereof, to sign a statement that he knows that such facility has, for the purposes of this title, been so designated by the Secretary under this subsection."

(4) The following new section is inserted after section 5 of such Act:

"PROTECTION OF DEFENSE FACILITIES AND CLASSIFIED INFORMATION

"SEC. 5A. (a) The President is authorized to institute such measures and issue such regulations, standards, restrictions, and safeguards as may be necessary to deny employment in or access to any defense facility to any person who has the opportunity, by reason of his employment in or

access to such facility, to engage in or to conspire with or to aid and abet others to engage in, sabotage, espionage, or any other activity which would impair the military effectiveness of the United States or the capabilities of the United States to produce defense materials or services, or would endanger the security of military personnel, on the basis of findings that such person's employment in or access to such facility is not clearly consistent with the national defense or security interests.

"(b) The President is authorized to institute such measures and issue such regulations, standards, restrictions, and safeguards as may be necessary to protect classified information released to or within any facility located in the United States, including procedures for determining eligibility and authorization for access to classified information so released, on the basis of findings that the granting or continuing of access authorization is clearly consistent with the national defense or security interests.

"(c) The President may perform any function vested in him by this section through or with the aid of such officers or agencies as he may designate.

"(d) The authority of the President under subsections (a) and (b) includes the right to established criteria and to authorize by regulation reasonable inquiries directed to an individual regarding his membership in, or affiliation

with, any Communist, Marxist, Fascist, totalitarian, or subversive organization, and such other associations, habits, and activities, past or present, which are relevant or material to a determination whether he should be denied employment in or access to any defense facility, or denied access to classified information, including but not limited to such criteria and inquiries of one or more of the following categories:

"(1) membership in, or affiliation with, and whether such individual is serving as an agent or employee of, (A) any organization which, by final order of the Board, has been determined to be a Communist organization, (B) any organization, foreign or domestic, which has been designated by the Attorney General pursuant to law or executive order as totalitarian, Communist, Fascist, or subversive, and (C) any organization which the President, or his designee for the purpose of these regulations, finds, or has probable cause to believe, is (i) an organization, foreign or domestic, which has been organized or utilized for the purpose of advancing the objectives of the Communist movement, or for the purpose of establishing any form of Communist dictatorship in the United States or abroad, (ii) an organization which has been organized or utilized for the purpose of giving aid or assistance to any foreign government, group, or association engaged in armed conflict with the United

States, (iii) an organization which is organized or utilized for the purpose of altering the form of government of the United States, or of any political subdivision thereof, by force or violence or other unconstitutional means, (iv) an organization which advocates, encourages, counsels, aids or abets violation of any Federal law related to the internal security of the United States or its defense against foreign aggression, (v) an organization organized or utilized by any foreign government, or by any foreign party, group, or association acting in the interest of any foreign government, for the purpose of (a) espionage, or (b) sabotage, or (c) obtaining information relating to the defense of the United States or the protection of the national security, or (d) hampering, hindering, or delaying the production of defense materials in the United States or in states in defensive alliance with the United States, or (e) obstructing the execution of a defense treaty of the United States, or (vi) an organization within the United State affiliated with, or substantially dominated or controlled by, or acting in concert with, any party, group, or association of the character described in this paragraph;

"(2) sabotage, espionage, or attempts or preparations therefor, or knowingly associating with spies or saboteurs;

"(3) treason, sedition, or the giving of aid and assistance to any foreign power, group, or association engaged in armed conflict with the United States, or the advocacy thereof;

"(4) inciting hostilities or conflicts against the United States, or against any foreign power friendly to the United States which might involve the United States in hostilities;

"(5) establishing or continuing sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, revolutionist, members of an organization referred to in paragraph (1) of this subsection, or with an espionage agent or other secret representative of a foreign nation whose interests may be inimical to the United States, under circumstances and of such a nature as to raise a reasonable doubt that the association is for innocent purposes or is clearly consistent with the national defense or security interests;

"(6) advocacy of rebellion, or of force and violence, to alter the constitutional form of government of the United States, or of any political subdivision thereof, or to obstruct the execution or enforcement of any Federal law;

"(7) service as an organizer, propagandist, courier, or messenger for any foreign government, or any orga-

nization, foreign or domestic, which is Communist or Communist controlled;

"(8) giving of aid or assistance to any foreign power, group, or association which is Communist or Communist controlled;

"(9) refusal to testify, upon the ground of self-incrimination, in any authorized inquiry relating to subversive activities conducted by any congressional committee, Federal court, Federal grand jury, or any other duly authorized Federal agency, as to any question relating to subversive activities of the individual involved or others;

"(10) the presence of a spouse, parent, brother, sister, or child in a nation whose interests may be inimical to the interests of the United States, or in satellites or occupied areas of such a nation, under circumstances permitting coercion or pressure to be brought on the individual through such relatives which may be likely to cause action contrary to the national defense or security interests;

"(11) any deliberate misrepresentations, falsifications, or omission of material facts from a personnel security questionnaire, personal history statement, or similar document;

"(12) performing or attempting to perform his duties, or otherwise acting, so as to serve the interests

of another government in preference to the interests of the United States;

"(13) intentional, unauthorized disclosure to any person of classified information;

"(14) willful violations or disregard of security regulations, or recurrent and serious, although unintentional, violations of such regulations or unauthorized disclosures of classified information;

"(15) any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the performance, judgment, or reliability of the individual, with due regard to the transient or continued effect of the illness;

"(16) any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion;

"(17) any other fact, activity, association, condition, or behavior which tends to establish reasonable ground for belief that access by such individual to classified information or to any defense facility will not be clearly consistent with the national defense or security interests.

"(e) For the purposes of this section, probable cause shall exist for the characterization under subsection (d) of

organizations, and individuals other than the individual who is the subject of clearance for access to a defense facility or classified information, when based upon (1) reports of the Federal Bureau of Investigation, Central Intelligence Agency, or of any other investigative agency of the United States, (2) reports or findings of congressional or State legislative investigations, (3) matters of public or common knowledge, or (4) any other information or source of information which the President or his designee for that purpose determines to be substantial and reliable. Nothing contained in this subsection shall be construed to support a demand by any such individual (including an individual who is the subject of clearance) or organization for access to investigative reports of any agency of the United States, or to require the disclosure of information, or the source of any information, when such disclosure would be deemed contrary to the national interest.

"(f) In determining the significance to be given for the purposes of this section to the organizational membership or associations of any individual who is the subject of clearance for access to a defense facility or classified information, but with due regard to the prohibitions of section 5(a)(1)(C), consideration shall be given to—

"(1) the character and history of that organization;

"(2) the time during which such person was a

member of or affiliated with such organization and, if such person no longer is a member of or affiliated with such organization, the time at which his membership or association was terminated, the circumstances of such termination, whether such termination was for temporary, deceptive, or spurious purposes, and the degree to which he has separated himself from the activities of that organization;

"(3) such person's knowledge of the nature and purposes of that organization, and factors relevant thereto, including but not limited to the extent to which the nature and purposes of the organization were publicly known at the time of such membership or association; and, if such organization has been found by final order of the Board to be a Communist organization, or if publicly designated by the Attorney General, the Director of the Federal Bureau of Investigation, or any Federal agency as totalitarian, Fascist, Communist, or subversive, whether such person had actual knowledge or notice of such final order or designation; and such individual's knowledge of the publications of such organization and the statements of its leaders from which the nature or purposes of such organization may be inferred;

"(4) such person's commitment to the purposes

of such organization, and factors relevant thereto, including but not limited to whether such person has engaged in activities sponsored by such organization, has met clandestinely or secretly in cells or units of such organization, paid dues thereto, and has received instruction or training therein;

"(5) the degree to which that person participated in the activities of that organization, and whether, if such individual has ceased such activities, he has continued to meet and associate with any leader or officer of such organization, or whether he is a sleeper for such organization;

"(6) his intent to assist, directly or indirectly, and by whatever means, in achieving the ends or ultimate purposes of such organization; and whether the evidence relating to the associations of such individual with such organization would be such as to justify an inference that he is at common law a coconspirator with it or any member or members thereof for any purpose.

"(g) So far as may be expedient and consistent with the objectives and purposes of this section, procedures and inquiries that may involve or evoke information of a derogatory nature relating to any individual or organization shall be conducted with due regard for the protection of such

individual or organization from unfair publicity or unjust injury. Under such rules as the President may prescribe, members of the general public may be denied access to the whole or any part of the proceedings and hearings conducted pursuant to the provisions of this section.

"(h) In the course of any inquiry, investigation, proceeding, or hearing to determine the fitness and qualifications of any individual for employment in or access to any defense facility or for access to classified information, whether or not on initial application for such employment or access authorization, or on review of any such employment or access authorization previously granted, the willful refusal of any individual to answer relevant inquiries required of him, in any application form or supplement thereto, or otherwise, or the giving of willfully false, misleading, or evasive responses or testimony, may be considered sufficient, in the absence of satisfactory explanation, to justify a refusal further to process any such application until compliance is made, or to justify denying, suspending, or revoking any such employment or access authorization.

"(i) Investigative personnel, screening or hearing officers, members of boards, counsel, and examiners assigned or authorized for the administration or execution of the regulations issued by the President pursuant to this section shall be specially trained and qualified for their duties as

such, and shall be knowledgeable on the subject of the origin and history of Communist and other subversive organizations, domestic and foreign, their diversity and identification, leadership, organizational techniques, conflict doctrines, tactics, and strategy.

"(j) The measures instituted or rules and regulations issued pursuant to this section may operate summarily to deny, suspend, or revoke any individual's employment in or access to a defense facility or access to classified information provided that (and subject to the provisions of subsection (k) of this section) he shall be notified in writing of the reasons for the action taken against him within thirty days from the time such action is taken, except that the furnishing of such statement of reasons may be postponed for causes that shall be deemed good and sufficient by the President but shall not be postponed for a period in excess of ninety days from the time such action is taken.

"(k) Except as provided in subsection (l) of this section, an individual's employment in or access to any defense facility or access to classified information, may not be finally denied, suspended, or revoked unless such individual (hereafter in this section referred to as 'applicant') has been given—

"(1) a written statement of reasons for the denial,

suspension, or revocation stated as comprehensively and detailed as the national security will permit;

"(2) an opportunity, after he has replied in writing within a reasonable time under oath or affirmation in specific detail to the statement of reasons, for a personal appearance proceeding at which time he may present evidence in his own behalf;

"(3) a reasonable time to prepare for the proceeding;

"(4) the opportunity to be represented by counsel; and

"(5) a written notice advising him of final action which, if adverse, shall specify whether the finding has been for or against him with respect to each allegation in the statement of reasons.

With respect to matters, other than those relating to the characterization in the statement of reasons of any organization or individual other than the applicant, which he controverts in his reply, the applicant shall be given an opportunity to inspect any documentary evidence or cross-examine either orally or through written interrogatories any witness providing adverse information upon which the President or his designee may rely in reaching a final determination to deny or revoke the authorization for access to classified information. However, documentary evidence which has been

classified, and information supplied by informants, may be received and considered without an opportunity for inspection or cross-examination if the applicant is given a summary of such evidence or information which is as comprehensive and detailed as the national security will permit and, in the case of information supplied by an informant, the informant is one—

"(A) who is identified but who cannot be brought forward because of death, serious illness, or for similar cause; or

"(B) who cannot, for reasons determined by the President (or his designee) to be good and sufficient, be either identified or cross-examined; or

"(C) whose identity cannot be revealed, in the judgment of the head of the Department supplying such informant, without substantial harm to the national interest.

Nothing contained in this title shall be deemed to support a demand by an applicant to inspect or have access to the investigative reports of any agency of the Government.

"(l) In cases where the President at any time personally determines that the procedures authorized by other subsections of this section cannot be employed with respect to any individual consistently with the national security, he may deny, suspend, or revoke such individual's employ-

ment in or access to any defense facility engaged in classified military projects or access to classified information released to any facility, when the President personally makes the determination to deny, suspend, or revoke such employment or access. Such determinations shall be final.

"(m) The President may, in accordance with such regulations as he may prescribe, provide for the reimbursement of all or any part of an applicant's net loss of earnings resulting directly from the suspension, denial, or revocation of employment or access to any defense facility, or access to classified information or any facility to which classified information has been released, if such applicant, at the time of such suspension, denial, or revocation, was employed in any such facility and if, at a later time, it has been determined that (1) the applicant is eligible for such employment or access and (2) after considering all of the facts and circumstances under which the suspension, denial, or revocation occurred, it is fair and equitable that the United States, rather than the applicant or his employer, bear the loss for which reimbursement is to be made. Reimbursement may not exceed the difference between the amount the applicant would have earned as an employee of the same employer had he continued in the same position as that held at the time of suspension, denial, or revocation and his interim earnings during the period commencing on the date of suspension, denial, or

revocation and ending with the date of giving notice to the applicant by regular first-class mail addressed to his last known address of his eligibility for employment or access authorization. Due regard shall be given to the duty of the applicant to minimize damages during the period of any such suspension, denial, or revocation, by reasonably seeking and accepting other employment for which he may be qualified.

"(n) Under such regulations as the President may prescribe, the President (or his designee for such purpose) shall have power to issue and, in his discretion for good cause shown, may issue, process to compel witnesses to appear and testify or produce evidence in a personal appearance proceeding under subsection (k) of this section. Any process so issued may run to any part of the United States and its possessions, including the Commonwealth of Puerto Rico. In any such proceeding, the applicant may be called by the Government to testify as a witness as of cross-examination. No person, on the ground or for the reasons that testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, shall be excused from testifying or producing documentary evidence, but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any

transaction, matter, or thing concerning which he, under compulsion as herein provided, may testify, or produce evidence, documentary or otherwise; but no natural person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying. Any person who willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify or produce evidence in obedience to any process duly issued under this section, shall be fined not more than $500, or imprisoned not more than six months, or both. Upon certification by the President (or his designee) concerning any such neglect, refusal, or failure by any person, to the United States attorney for any judicial district in which such person resides or is found, the United States attorney shall proceed by information for the prosecution of such person. The President (or his designee), upon good cause shown, may (1) authorize any party to a personal appearance proceeding under subsection (k) of this section to obtain the testimony of any person by deposition upon oral examination or by written interrogations, and (2) appoint any person to obtain such testimony. Any person so appointed shall have the power to administer oaths.

"(o) The fees and expenses of witnesses subpenaed or called by or on behalf of the applicant shall be borne by the applicant, excepting that the President may, in accordance with such regulations as he shall prescribe, provide

that such fees and expenses shall, under certain equitable circumstances and in the interests of justice, be borne in whole or in part by the United States. Witnesses subpenaed or called to testify or produce evidence at a personal appearance proceeding are authorized travel expenses and per diem as provided by law for witnesses in courts of the United States. A witness whose deposition is taken, and the person taking his deposition, are entitled to the same fees that are paid for like services in the courts of the United States.

"(p) The Administrative Procedure Act, as amended (5 U.S.C. 1001 et seq.), shall not apply to the use or exercise of any authority granted by this section.

"(q) For the purpose of this section, the term 'classified information' means information, regardless of country of origin, which, for reasons of the national defense or security, is specifically designated by an agency of the United States Government for limited or restricted dissemination or distribution. The term 'classified military project' means a project for military use to which access is restricted, or information concerning which is for restricted dissemination or distribution, as specified by an agency of the United States Government for reasons of the national defense or security.

"(r) In any case where a person's employment in or access to any defense facility, or any facility engaged in a classified military project, or access to classified informa-

tion has been denied, suspended, or revoked, pursuant to the regulations and procedures authorized by this section or by reason of any agreement between such person's employer and an agency or officer of the United States responsible for the safeguarding of any such facility or information, or by reason of any action taken by such employer in concert with such agency or officer of the United States, no court of the United States shall have jurisdiction at any time to issue any restraining order or temporary or permanent injunction having the effect of granting or continuing such employment or access. No court of the United States shall have jurisdiction of any action or proceeding on the complaint of any person adversely affected by the enforcement, execution, or application of the provisions of this section, except after exhaustion of the administrative remedies authorized or provided pursuant to the provisions of this section."

(5) Paragraph (17) of section 3 of such Act is amended to read as follows:

"(17) A person, though not a member, shall be deemed 'affiliated' with or an 'affiliate' of an organization when there exists between such person and the organization such a close working alliance or association that the conclusion may reasonably be drawn that there is a mutual understanding or recognition between such person and organiza-

tion that the organization can rely and depend upon such person to cooperate with it and to work for its benefit for an indefinite future time. A practice of giving or loaning of money or any other thing of value, other than by a commercial banking or lending institution in the usual course of business, for any purpose to any organization shall create a rebuttable presumption of affiliation therewith. Nothing in this paragraph shall be construed as an exclusive definition of affiliation."

(6) Subsection (k) of section 13 of such Act is amended to read as follows:

"(k) When any order of the Board issued under subsection (g), (h), (i), or (j) of this section becomes final under the provisions of section 14(b) of this title, the Board shall publish in the Federal Register the fact that such order has become final."

SEC. 2. Section 1 of title II of the Act of June 15, 1917 (50 U.S.C. 191), is amended as follows:

(1) The last paragraph of such section is amended by striking out the period at the end of subparagraph (b) and inserting in lieu thereof a comma and the following: "and with authority for such purposes to deny, revoke, or suspend access to such vessels, harbors, ports, and waterfront facilities, and for such purposes to extend and apply to this paragraph, to the extent the President deems applicable, the

procedures, standards, provisions, and regulations authorized and provided by section 5A of the Subversive Activities Control Act of 1950."

(2) At the end of such section add the following new paragraph:

"In any case where a person's employment or access with respect to any such vessel, harbor, port, or waterfront facility has been denied, suspended, or revoked, pursuant to the regulations and procedures authorized by the provisions of the preceding paragraph, or by reason of any agreement between such person's employer and an agency or officer of the United States responsible for the safeguarding of the foregoing vessels, harbors, ports, and facilities, or by reason of any action taken by such employer in concert with such agency or officer of the United States, no court of the United States shall have jurisdiction at any time to issue any restraining order or temporary or permanent injunction having the effect of granting or continuing such employment or access. No court of the United States shall have jurisdiction of any action or proceeding on the complaint of any person adversely affected by the enforcement, execution, or application of the provisions of the preceding paragraph, except after exhaustion of the administrative remedies authorized or provided under such preceding paragraph."

90TH CONGRESS
2D SESSION

H. R. 15018

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1968

Mr. BENNETT (for himself, Mr. HÉBERT, Mr. FISHER, Mr. LENNON, Mr. RANDALL, Mr. HICKS, Mr. MACHEN, Mr. WALKER, Mr. BRAY, Mr. BOB WILSON, Mr. CHAMBERLAIN, Mr. KING of New York, Mr. SMITH of Oklahoma, and Mr. CLANCY) introduced the following bill; which was referred to the Committee on Un-American Activities

[H.R. 15092, introduced by Mr. Rivers on February 5, 1968; H.R. 15229, introduced by Mr. Long on February 8, 1968; and H.R. 15272, introduced by Mr. Fuqua on February 8, 1968, are identical to H.R. 15018.]

A BILL

To amend the Subversive Activities Control Act of 1950 to authorize the Federal Government to bar the employment in defense facilities of individuals believed disposed to commit acts of sabotage, espionage, or other subversion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Subversive Activities Control Act of 1950 (50 U.S.C. 781 et seq.) is amended as follows:

(1) The second sentence of clause (7) of section 3 (50 U.S.C. 782 (7)) is amended to read as follows: "The term 'defense facility' means the whole or any part of any industrial plant or facility—

"(a) engaged in classified military projects;

"(b) producing weapons systems, subassemblies, and their components;

"(c) producing essential common components, intermediates, basic materials, and raw materials;

"(d) providing essential communications, gas, water, and electric utilities services; or

"(e) conducting laboratory research significant to national defense;

and whose disruption by an act of sabotage, espionage, or other subversion would seriously impair the productive capabilities or military effectiveness of the United States."

(2) Section 5(a)(1)(D) (50 U.S.C. 784(a)(1)(D)) is repealed.

(3) Section 5(b) (50 U.S.C. 784(b)) is amended to read as follows:

"(b) Under regulations to be prescribed by the President, the Secretary of Defense is authorized and directed to designate 'defense facilities,' as defined in clause (7) of section 3 of this title. The Secretary shall promptly notify the management of an industrial plant or facility which he proposes to designate a 'defense facility' of the right of the management to oppose that designation under rules prescribed by the President, or his designee for this purpose, by written objection and oral arguments. In the absence of objection to

the proposed designation or upon a final determination in favor of such a designation, the management of the defense facility shall immediately post conspicious notice of such designation in such form and in such place or places as to give notice thereof to all employees of, and to all applicants for employment in, such facility. Such posting shall be sufficient to give notice of such designation to any person subject to it. Upon the request of the Secretary, the management of any facility so designated shall require each employee of the facility, or any part thereof, to sign a statement that he knows that the facility has, for the purposes of this title, been designated by the Secretary under this subsection."

(4) The following new section is inserted after section 5:

"PROTECTION OF DEFENSE FACILITIES

"SEC. 5a. (a) The President is authorized to institute such measures and issue such regulations as may be necessary to bar from employment in any defense facility designated by the Secretary of Defense in accordance with section 5 (b) of this Act any person as to whom there is reasonable grounds to believe he is disposed and has the opportunity by reason of his employment to engage in sabotage, espionage, or other subversive acts against his employer. The President may perform any function vested in him by this section through or with the aid of such officers or agencies as he may designate.

"(b) The authority of the President under subsection (a) includes the right to authorize by regulation reasonable inquiries directed to an individual regarding his affiliations, memberships, beliefs, or activities, past or present, which are relevant to a determination of whether there are reasonable grounds to believe that he may engage in sabotage, espionage, or other subversive acts as an employee in a defense activity. Refusal to answer such an inquiry by the individual may be considered an adequate reason for concluding that he should be barred from employment in a defense facility if there is no reasonably available alternative source of the information sought.

"(c) Except as provided in subsection (d) of this section, no measure instituted, or rule or regulation issued, pursuant to subsection (a) or (b) of this section shall operate to deprive any person of employment at a defense facility unless such person shall first have been notified of the reasons for the action taken against him and given a reasonable opportunity to present information in his behalf including his reasons for refusing to answer inquiries or supply information. The reasons for the action taken against him shall be sufficiently specific to permit the person to respond to them, and such opportunity shall, if the person so desires, include a hearing. The Administrative Procedure Act shall not be applicable to proceedings under this section.

Nothing contained in this section shall be deemed to require any investigatory organization of the United States Government to disclose its informants or other information when such disclosure, in the opinion of the head of the organization, would be substantially harmful to the national interest. However, if such information is not disclosed the person against whom the action is taken shall be furnished with a fair summary of the information in support of the reasons for the action taken against him.

"(d) The measures instituted, or rules or regulations issued, pursuant to subsection (a) or (b) hereof may operate to bar summarily any person employed at a defense facility from employment at such facility provided that he shall be notified in writing of the reasons for the action taken against him within thirty days from the time he is so barred. The furnishing of the statement of reasons to the person so barred may be postponed, from time to time, based on a written determination that, for good cause shown, it is not feasible to furnish the statement of reasons within the time prescribed but, in any event, the statement of reasons shall be furnished to the person affected within ninety days from the time he is barred. Anyone barred under these provisions shall be given a reasonable opportunity to defend himself against such an action, including, if he so requests, a hearing. Any request for a hearing shall be

filed by the person affected within thirty days of the date the statement of reasons was issued to him unless on application, it is found, for good cause shown, that the person affected should be granted additional time to request a hearing, but, in any event, a request for a hearing must be filed by the person affected within ninety days of the date the statement of reasons was issued to him. A determination shall be made and transmitted to the person affected promptly, and if appellate proceedings are provided by the rules or regulations for review of any such determination, they shall be conducted expeditiously. If the summary bar against such person is removed as a result of any proceedings, the person shall be compensated by the United States solely for the earnings he lost because of his debarment from employment in the designated defense facility, but not for more than the difference between the amount the person would have earned at the rate he was receiving on the date the bar was placed against him and the amount of any interim net earnings. Appropriations available to departments or agencies concerned may be used to pay compensation authorized by this section."

"(e) The authority of the President under subsection (a) includes the right to seek in any appropriate Federal court a temporary or permanent injunction, restraining order, or other order against the management of a defense

facility designated in accordance with section 5(b) of this Act to prevent the employment of a person found, in accordance with subsection (c) or (d), to be disposed and to have the opportunity to engage in sabotage, espionage, or other subversive acts against his employer."

SEC. 2. This Act shall take effect sixty days following the date of enactment.

90TH CONGRESS
2D SESSION

H. R. 15336

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1968

Mr. EDMONDSON introduced the following bill; which was referred to the Committee on Un-American Activities

A BILL

To amend the Subversive Activities Control Act of 1950.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Subversive Activities Control Act of 1950 is amended—

(1) by striking out paragraph (7) and inserting in lieu thereof:

"(7) The term 'defense facility' means any plant, factory, or other manufacturing or service establishment, or any part thereof, engaged in the production or furnishing, for the use of the Government of any commodity or service determined and designated by the Secretary of Defense to be of

such character as to affect the military security of the United States."; and

(2) by adding at the end the following new paragraphs:

"(20) The term 'sensitive position' means any position in which an employee would have access to information or material which has been duly classified in the interest of national security, by any officer or employee of any executive agency acting under authority conferred by law or Executive order, as 'secret' or 'top secret' or, in the case of the Atomic Energy Commission, as 'atomic secret' or 'atomic top secret'.

"(21) The term 'active member' means a current or recent member who participates or has recently participated in activities or programs of a Communist-action organization with the knowledge of the organization's illegal advocacy or the intent to further the objectives of the Communist organization."

That section 5 of the Act is amended—

(1) by striking out paragraph (a) (1) (D) and inserting in lieu thereof:

"(a) (1) (D) if such organization is a Communist-action organization and such member is an active member of such organization, to engage in an employment in a sensitive position in a defense facility."

90TH CONGRESS
2D SESSION

H. R. 15828

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1968

Mr. GURNEY introduced the following bill; which was referred to the Committee on Un-American Activities

A BILL

To strengthen the internal security of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Internal Security Act of 1968".

TITLE I—AMENDMENTS TO TITLE 18, UNITED STATES CODE

SEC. 101. SABOTAGE ON WAR PREMISES OR NATIONAL-DEFENSE PREMISES.—(a) The definition of "war premises" in section 2151 of title 18, United States Code, is amended to read as follows:

"The words 'war premises' include all buildings,

grounds, mines, or other places wherein such war material is being or may be produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other military or naval stations of the United States, or any associate nation."

(b) The definition of "national-defense premises" in section 2151 of title 18, United States Code, is amended to read as follows:

"The words 'national-defense premises' include all buildings, grounds, mines, or other places wherein such national-defense material is being or may be produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other military or naval stations of the United States."

SEC. 102. SMITH ACT AMENDMENTS.—(a) The first paragraph of section 2385 of title 18 of the United States Code is amended so as to read:

"Without regard to the immediate provable effect of such action, whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the Gov-

ernment of the United States or the government of any State, Territory, District or possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or".

(b) Section 2385 of title 18 of the United States Code is amended by inserting therein, immediately after the first paragraph thereof, the following new paragraph:

"Whoever, with intent to cause the overthrow or destruction of any such government, in any way or by any means advocates, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying any such government by force or violence; or".

(c) The last paragraph of section 2385 of title 18 of the United States Code is amended to read as follows:

"As used in this section, the term 'organize' with respect to any society, group, or assembly of persons, includes encouraging recruitment or the recruiting of new or additional members, and the forming, regrouping, or expansion of new or existing units, clubs, classes, or sections of such society, group, or assembly of persons."

SEC. 103. PROHIBITING AID TO FOREIGN GOVERNMENT ENGAGING OUR ARMED FORCES IN COMBAT.—(a) Chapter 115 of title 18 of the United States Code (relating to

treason, sedition, and subversive activities) is hereby amended by adding at the end thereof the following new section:

"§ 2392. Aid to foreign government engaging our Armed Forces in combat

"(a) Whoever, owing allegiance to the United States, knowingly and willfully gives aid or comfort to an adversary of the United States by an overt act, within the United States or elsewhere, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(b) As used in this section the term 'adversary of the United States' means any foreign nation or armed group which is engaged in open hostilities against the United States or with which the Armed Forces of the United States are engaged in open hostilities."

(b) The analysis of chapter 115 of such title is amended by adding at the end thereof the following new item:

"2392. Aid to foreign government engaging our Armed Forces in combat."

TITLE II—AMENDMENTS TO THE INTERNAL SECURITY ACT OF 1950

SEC. 201. SUBVERSIVE ACTIVITIES CONTROL BOARD.—(a) Section 12 of the Subversive Activities Control Act, as amended (50 U.S.C. 791), is further amended—

(1) by inserting in subsection (a), immediately after the third sentence thereof, the following new sen-

tence: "The term of office of each member of the Board appointed after January 1, 1969, shall be for seven years from the date of expiration of the term of his predecessor, except that the term of office of any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be for the remainder of the term of his predecessor.";

(2) by inserting in subsection (a), immediately preceding the last sentence thereof, a new sentence as follows: "The Chairman shall function as the chief executive and administrative officer of the Board with respect to (1) the appointment and supervision of personnel employed under the Board, except such personnel employed regularly and full time in the immediate offices of members of the Board other than the Chairman, and (2) the use and expenditure of funds, except that the Board shall have the functions of preparing and revising budget estimates and determining upon the distribution of appropriated funds according to major programs and purposes."; and

(3) by repealing subsection (i) thereof.

(b) Subchapter II (relating to Executive Schedule pay rates) of chapter 53 of title 5, United States Code, is amended as follows:

(1) Section 5314 is amended by inserting at the end thereof the following new item:

"(53) Chairman of the Subversive Activities Control Board."

(2) Section 5315 is amended by inserting at the end thereof the following new item:

"(90) Members, Subversive Activities Control Board."

(3) Section 5316 is amended by striking out items (34) and (92).

SEC. 202. REVIEW OF DETERMINATIONS OF THE BOARD.—Section 14 of the Subversive Activities Control Act, as amended (50 U.S.C. 793), is further amended by adding at the end of subsection (a) thereof the following new sentence: "In any appeal or review pursuant to this subsection, the sole question to be decided shall be the validity of the decision and order of the Board at the time of issuance thereof."

SEC. 203. FINDINGS OF FACT.—The Congress finds and declares that because of the totalitarian nature of the world Communist conspiracy, the fact that a major objective of such conspiracy is the overthrow of the Government of the United States by force and violence, the obligation imposed in Communist discipline upon members of Communist organizations to take advantage of opportunities to act in furtherance

of the aforesaid objective, and the likelihood that an individual who willfully and knowingly chooses to be a member of a Communist organization (and thereby subject to Communist discipline) will act in furtherance of the aforesaid objective if given opportunity to do so, it is per se a clear and present danger to the national security to have employed in a defense facility an individual who, after the expiration of ninety days following an order of the Subversive Activities Control Board designating an organization as a Communist-action organization, and with knowledge or notice of such order, has elected to remain or to become a member of such organization.

SEC. 204. COMMUNISTS BANNED FROM DEFENSE FACILITIES.—(a) Section 3 of the Internal Security Act of 1950 is amended by striking out "For the purpose of this title—", and inserting in lieu thereof: "For the purposes of this title, unless otherwise provided—".

(b) Subsection (a) (1) of section 5 of the Internal Security Act of 1950 is amended (1) by striking out "United States; or" in paragraph (B), and inserting in lieu thereof "United States.", and (2) by striking out paragraphs (C) and (D).

(c) Subsection (a) (2) of section 5 of such Act is amended by striking out "or of any defense facility".

(d) Subsection (b) of section 5 of such Act is redesignated as subsection (c).

(e) Section 5 of such Act is further amended by inserting immediately after subsection (a) a new subsection as follows:

"(b) (1) It shall be unlawful—

"(A) for any member of a Communist organization, knowing or having reasonable grounds for believing such organization to be a Communist organization, in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such organization; or

"(B) for any individual who is an active member of an organization, knowing such organization to be an organization as to which there is in effect a final order of the Subversive Activities Control Board by which such organization has been determined to be a Communist-action organization, and having subscribed or assented to any unlawful objective of such organization, to engage in any employment which may affect the national security of the United States in a facility which is designated as a defense facility (as defined by paragraph (7) of section 3 of the Subversive Activities Control Act of 1950) under a currently valid designa-

tion by the Secretary of Defense, with knowledge or with notice of such designation; or

"(C) for any officer or employee of a defense facility (i) to contribute funds or services to a Communist organization, knowing or having reasonable grounds for believing such organization to be a Communist organization, or (ii) to advise, counsel, or urge any person, knowing or having reasonable grounds for believing that such person is a member of a Communist organization, to perform, or to omit to perform, any act if such act or omission would constitute a violation of paragraph (A) or (B) of subdivision (1) of this subsection.

"(2) As used in this subsection—

"(A) The term 'Communist-action organization' means any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title.

"(B) The term 'Communist organization' means a Communist-action organization, and any organization in the United States (other than a Communist-action organization) which (i) is substantially directed, dominated, or controlled by a Communist-action organization, or (ii) is substantially directed, dominated, or controlled by one or more members of a Communist-action organization, and (iii) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title."

(f) Subsection (c) of section 5 of such Act (as redesignated by subsection (d) of this section) is amended by adding at the end thereof the following:

"In making any determination under this subsection with respect to any facility, the Secretary shall consider—

"(1) the danger of the occurrence of espionage within such facility arising from (A) access by persons admitted thereto to classified information or material, (B) opportunity afforded to such persons for association with other persons having access to or knowledge of classified information or material, and (C) opportunity

available to such persons to influence or deter, or to attempt to influence or deter, the formulation or implementation of any policy or the performance of any function or operation which may affect the national security; and

"(2) the danger of the occurrence of sabotage within such facility arising from (A) access, by persons admitted thereto, to premises at which functions or operations which may affect the national security are or may be performed or carried into effect, (B) access by such persons to premises or instrumentalities for control or communication which are necessary for the maintenance and normal operation of basic services required by such facility, including (without limitation) the services of heating, lighting, air conditioning, water supply, and sewerage, and (C) access by such persons to any other means for the commission of acts of sabotage or for the acquisition of knowledge which would provide opportunity for or facilitate the commission of such acts.

All determinations made under this subsection shall be subject to judicial review pursuant to chapter 7, title 5, United States Code."

TITLE III—COURTS AND WITNESSES

REPRISALS AGAINST CONGRESSIONAL WITNESSES PROHIBITED

SEC. 301. (a) Section 1505 of title 18 of the United States Code is amended by inserting "(a)" before "Whoever" at the beginning thereof and by adding at the end thereof the following new subsection:

"(b) Whoever as an officer of the United States or of any department or agency thereof causes or attempts to cause a witness, who is a member of the Armed Forces of the United States or an officer or employee of the United States or of any department or agency thereof, to be demoted, suspended, dismissed, retired, or otherwise disciplined on account of his attending or having attended any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress, or on account of his testifying or having testified to any matter pending therein, or on account of his expression on the hearing record of his personal opinion with respect to any matter pending therein, or on account of his giving of any testimony which discloses any subversive activity or wrongdoing within any department or agency in the executive branch of the Government other than testimony disclosing misfeasance, malfeasance, dereliction of duty, or past reprehensible conduct on the part of such witness, shall be fined

not more than $5,000 or imprisoned not more than five years, or both. Nothing contained in this paragraph shall be deemed to authorize or to require the disclosure of (1) national security information, or (2) unconfirmed derogatory information from the files of, or information furnished in confidence to, any recognized intelligence agency of the Government, or the existence of any such information.

"The demotion, suspension, dismissal, or retirement (other than voluntary or for physical disability) of any such witness within one year after attending or testifying in such inquiry or investigation, unless such testimony discloses misfeasance, malfeasance, dereliction of duty, or past reprehensible conduct on the part of such witness, shall be considered prima facie evidence that such witness was demoted, suspended, dismissed, or retired because of such attendance or such testimony."

(b) Section 3486 of title 18 of the United States Code is amended by adding at the end thereof the following new subsection:

"(e) No witness, who is a member of the Armed Forces of the United States or an officer or employee of the United States, or of any department or agency thereof, shall be demoted, suspended, dismissed, retired, or otherwise disciplined on account of testimony given or official papers or records produced by such witness before either House, or before

any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, unless such testimony is given or such official papers or records are produced in violation of law, or unless such testimony or the production of such papers or records discloses misfeasance, malfeasance, dereliction of duty, or reprehensible conduct on the part of such witness."

ADDITIONAL PROHIBITION

SEC. 302. (a) Any reprisal taken by (1) any department or agency of the United States, or (2) any employee thereof acting (A) in his official capacity, (B) through the use of the powers of his office or position, or (C) within the scope of his authority, in any manner or by any means not prohibited by section 1505 of title 18, United States Code, against (1) any witness who testifies or has testified before any joint committee, committee, or subcommittee of the Congress, for or on account of his testimony or the fact of his having testified, or (2) any officer or employee of such department or agency who furnishes or has furnished to (A) any joint committee, committee, or subcommittee of the Congress having jurisdiction with respect thereto, (B) the Chairman or a member thereof, or (C) the head of the staff of such committee or subcommittee, for the use or information thereof, any information or any document or other paper disclosing any wrongdoing or breach of security in

such agency, for or on account of the nature of such information or documentation so furnished or the fact of his having so furnished it, is hereby prohibited.

(b) Any person who violates subsection (a) of this section by (1) ordering, initiating, or otherwise causing, or (2) approving, or (3) urging, advising, or otherwise attempting to bring about, or (4) conspiring to cause or to bring about, any reprisal prohibited by such subsection shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not to exceed one year or by a fine of not to exceed $1,000 or by both such fine and such imprisonment.

ACCELERATED CONSIDERATION OF SUBVERSIVE CASES

SEC. 303. In the application of rule 50 and rule 39 (d) of the Federal Rules of Criminal Procedure and of rule 20 of the Rules of the Supreme Court of the United States, the United States district courts, the United States courts of appeals, and the Supreme Court of the United States, respectively, shall give preference in time of hearing and determination to criminal proceedings involving offenses described in chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), and chapter 115 (relating to treason, sedition, and subversive activities) of title 18 of the United States Code and subsection 10 (b) of the Atomic Energy Act of 1946 (42 U.S.C. 1810 (b)), and to criminal

proceedings involving an attempt or a conspiracy to commit any offense described in such chapters or such subsection.

PURPOSES OF H.R. 15626 AND CERTAIN COURT DECISIONS PERTINENT THERETO

The principal purposes of the bill are:

(1) To restore vitality to section 5(a)(1)(D) of the Subversive Activities Control Act of 1950 which made it unlawful for members of Communist-action organizations to engage in employment in a defense facility. This provision had been voided by the Supreme Court in *United States* v. *Robel*, decided December 11, 1967.

(2) To give express congressional sanction for the institution of measures and regulations establishing a security clearance program for employment in or access to defense facilities, for the purpose of safeguarding such facilities against sabotage, espionage, or other subversive activity. See *Greene* v. *McElroy*, 360 U.S. 474 (1959).

(3) To give express congressional sanction for the institution of measures and regulations establishing an industrial security clearance program for the protection of classified information released to United States industry or any facility in the United States. See *Greene* v. *McElroy*, supra; *Shoultz* v. *Secretary of Defense*, United States District Court, Northern District of California, decided February 9, 1968.

(4) To give express congressional authorization for the institution of measures and regulations establishing a personnel security clearance program for access to vessels, harbors, ports, and waterfront facilities under the Magnuson Act, to remedy a deficiency revealed by the Supreme Court in *Schneider* v. *Commandant, United States Coast Guard*, decided January 16, 1968.

(5) To establish procedures strengthening the administration and enforcement of the foregoing security programs by authorizing specific investigation, hearing, and review procedures, including the subject matter of inquiries, the cross-examination and confrontation of witnesses, the issuance of compulsory process for attendance of witnesses, the granting of immunity for compelled testimony, the regulation of jurisdiction of courts in certain proceedings, and authority for reimbursement to persons under certain circumstances for loss of earnings.

UNITED STATES V. *EUGENE FRANK ROBEL*

UNITED STATES SUPREME COURT, DECIDED DECEMBER 11, 1967

The decision

The opinion for the Court was delivered by Chief Justice Warren. Justice Brennan in a separate opinion concurred in the result. Justice White, with whom Justice Harlan joined, filed a dissenting opinion. Justice Marshall took no part in the consideration or the decision of the case.

In this case, the Supreme Court held section 5(a)(1)(D) of the Subversive Activities Control Act of 1950 to be void on its face for "overbreadth," unconstitutionally abridging the "right of association" protected by the first amendment.

Section 5(a)(1)(D) made it unlawful for any member of a "Communist-action organization," with knowledge or notice that such organization is registered or that there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, "to engage in any employment in any defense facility."

The term "defense facility" is defined in sections 3(7) and 5(b) of the act as any facility designated by the Secretary of Defense "with respect to the operation of which he finds and determines that the security of the United States requires the application of the provisions" of section 5(a).

Pursuant to the provisions of the act, the Secretary of Defense designated the Todd Shipyards Corporation of Seattle, Washington, as a "defense facility." Eugene Frank Robel, a member of the Communist Party of the United States, an organization which had been found by final order of the Board to be a "Communist-action organization," was employed at that shipyard as a machinist and was indicted under the provisions of section 5(a)(1)(D), charged with a violation of its provisions.

The district court granted Robel's motion to dismiss the indictment. The Supreme Court affirmed, although on a basis differing from that of the district

court, declaring the provision under which the indictment was found to be, as previously stated, in violation of Robel's first amendment "right of association."

In affirming the dismissal of the indictment, Chief Justice Warren, for the majority, said:

"That statute casts its net across a broad range of associational activities, indiscriminately trapping membership which can be constitutionally punished and membership which cannot be so proscribed. It is made irrelevant to the statute's operation that an individual may be a passive or inactive member of a designated organization, that he may be unaware of the organization's unlawful aims, or that he may disagree with those unlawful aims. It is also made irrelevant that an individual who is subject to the penalties of §5(a)(1)(D) may occupy a nonsensitive position in a defense facility. Thus, § 5(a)(1)(D) contains the fatal defect of overbreadth because it seeks to bar employment both for association which may be proscribed and for association which may not be proscribed consistently with First Amendment rights. * * *"

Mr. Justice Brennan, concurring in the result, said that he was "not pursuaded" that section 5(a)(1)(D) was fatal for "overbreadth" as he had agreed was the case in other contexts, particularly in *Aptheker* v. *Secretary of State*, 378 U.S. 500, by which the Court struck down section 6 (passport prohibitions) of the act on the same ground now applied by it to section 5(a)(1)(D). He pointed out that "Congress often regulates indiscriminately, through preventive or prophylactic measures" and that such regulation has been upheld even where fundamental freedoms are potentially affected. He said that we may assume that Congress may have been justified in its conclusion that alternatives to section 5(a)(1)(D) were inadequate for the safeguarding of essential defense facilities against espionage and sabotage, and therefore the Congress could constitutionally exclude *all* party members from employment in them.

Mr. Justice Brennan said that his quarrel with the provision was based on the fact that the Congress gave the Secretary of Defense no meaningful standard to govern his designation of defense facilities, thus creating a danger of an arbitrary application of criminal sanctions in an area of protected freedoms. The absence of adequate standards, he said, reflected the failures of Congress (1) to make a legislative judgment on the extent to which the prophylactic measure should be applied, (2) to assure respect for constitutional liberties because of the absence of any type of administrative hearings, public or private, on the Secretary's designation, or the review thereof, and (3) to give adequate notice to persons affected by criminal sanctions as to whether the Secretary is acting within his authority, so that they may determine whether or not to risk disobedience.

Relevant provisions in H.R. 15626

The bill so narrows the type of facilities which may be designated as such by the Secretary of Defense that all positions of employment therein may reasonably be said to be sensitive. Moreover, section 5(a)(1)(D), which establishes criminal sanctions, has been amended so as to require (1) proof of membership in a Communist-action organization, plus (2) proof of such member's *actual* knowledge or notice of the final order of the Board determining it to be an organization of that type,[1] plus (3) such member's *actual* knowledge or notice of the designation of the facility as a defense facility.

In addition, the bill remedies the objections raised by Mr. Justice Brennan in his concurring opinion, by establishing a meaningful standard for the designation of defense facilities by the Secretary of Defense, with provisions reflecting (1) a legislative judgment as to the extent to which the prophylactic measure is to be applied, (2) procedural safeguards assuring respect for constitutional liberties, and (3) adequate notice to persons affected by the criminal sanctions as to whether the Secretary is acting within his authority.

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[1] The bill amends section 13(k) of the act by repealing clauses imputing ("constructive") notice to members of Communist organizations on publication of the Board's final orders in the *Federal Register*. In *Aptheker* v. *Secretary of State*, supra, Mr. Justice Goldberg, for the majority, noted that section 13(k) of the act provided that publication in the *Federal Register* of the fact of the Board's final order " 'shall constitute notice to all members of such organization that such order has become final,' " pointing out that the terms of section 6 (passport prohibitions) applied whether or not the member *actually* knew or believed that he was associated with a Communist organization.

GREENE v. M'ELROY

360 U.S. 474

The decision

The opinion for the Court was delivered by Chief Justice Warren. Concurring views were expressed by Justices Frankfurter, Harlan, and Whittaker. Justice Clark filed a dissenting opinion.

In this case the Court struck down that portion of the industrial security program established by the Department of Defense under which a person's fitness for clearance was determined on the basis of fact determinations in which individuals were denied "traditional procedural safeguards of confrontation and cross-examination." The Court did so on the ground that the regulations were not specifically authorized by the President or the Congress, without deciding whether the President or the Congress has inherent authority to create such a program.

Greene, who began his employment in 1937 with the Engineer and Research Corp., a business devoted mainly to the development and manufacture of mechanical and electronic products, was first employed by that corporation as a junior engineer and at the time of his discharge in 1953 was vice president and general manager. He had been credited with the development of a complicated electronic flight simulator and with the design of a rocket launcher, produced by this corporation and long used by the Navy. The corporation was engaged in classified contract work for the various armed services and had entered into a security agreement or contract by which the corporation agreed, in the performance of this work, to provide and maintain a system of security control, and that it would not permit any individual to have access to classified matter unless cleared by the Government. During the World War II period, Greene had received security clearance, but in 1951 information came to the attention of the Government, including evidence of his maintenance of a close and sympathetic association with various officials of the Soviet Embassy, which showed clearly that Green was a security risk, if not actually disloyal to the United States.

A letter of charges was delivered to Greene, and he was informed that he could seek a hearing before the Review Board. He appeared with counsel, was questioned, and in a series of hearings was given an opportunity to present his witnesses and his case. Greene's own admissions would seem to establish what the Government had reasonably concluded, namely, that he was a security risk, although the Government presented no witnesses and, relying largely on confidential reports, did not give Greene the opportunity to confront and cross-examine confidential informants whose statements reflected on him. Greene's security clearance was finally withdrawn and, as a result, his services were no longer useful to his corporation. He was forced to resign from his offices in the corporation and was discharged.

Greene appealed to the district court asking for a declaration that the revocation of his security clearance was unlawful and void on the ground that he was denied liberty and property without due process of law in contravention of the fifth amendment. The district court and the court of appeals upheld the revocation. The Supreme Court reversed.

Conceding that the President in general terms had authorized the Department of Defense to create procedures to restrict the dissemination of classified information and that even in the absence of a specific delegation the Department was authorized to fashion and apply a clearance program which would afford affected persons the safeguards of confrontation and cross-examination, the Court held, however, that in the absence of explicit delegation by either the President or the Congress the Department could not fashion and apply the program which it did in revoking Greene's security clearance.

The decision left several basic questions unanswered, which is evident in the opinion of the Chief Justice who said:

"Whether those procedures under the circumstances comport with the Constitution we do not decide. Nor do we decide whether the President has inherent authority to create such a program, whether congressional action is necessary, or what the limits on executive or legislative authority may be. We decide only that in the absence of explicit authorization from either the President or Congress the respondents were not empowered to deprive petitioner of his job in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination."

(It is to be noted that following this decision the President on February 20, 1960, issued Executive Order 10865, giving authority to certain departments, including the Department of Defense, to issue regulations for the safeguarding of classified information released to United States industry, with express provisions regulating the exercise of the privileges of confrontation and cross-examination. However, no case has reached the courts in which the new regulations relating to cross-examination and confrontation have been called into question.)

Relevant provisions in H.R. 15626

The bill (see particularly subsection (k), at page 15) gives express congressional sanction for the application of personnel screening procedures, including the regulation of the privileges of confrontation and cross-examination, in substantially the same form as now prescribed by Executive Order 10865 and Department of Defense directives. It is believed that the provisions of the bill accord maximum benefits to the individual consistently with the imperative and overriding demands of the national security.

DEXTER C. SHOULTZ v. SECRETARY OF DEFENSE
U.S. DISTRICT COURT, N. D. CAL., DECIDED FEBRUARY 9, 1960

The decision

The court in this case temporarily and, after hearing, permanently enjoined the Secretary of Defense from suspending Shoultz's security clearance for access to information classified as secret, on the ground that the particular procedure under which the suspension was applied was not specifically authorized by the President or Congress.

Shoultz, a holder of a security clearance for access to information classified as secret, was employed by Lockheed Missiles and Space Company, of Sunnyvale, California. While thus employed he was notified that the Screening Board of the Department of Defense had some new information affecting his continued eligibility for clearance and that his status was to be reexamined on the basis of this information. He was requested to attend an interview at which he would be questioned on matters germane to his continuing eligibility. He was advised that he could be represented by counsel at the interview and that he would be afforded an opportunity to make a statement on his behalf. He was also advised that his refusal to answer questions relevant to his continued eligibility would result in a suspension of his existing clearance and that further processing of his case would be discontinued.

Shoultz appeared, stated his name, address, and employment, in response to questions propounded by the Department counsel who was conducting the interview, but declined to answer all other questions on the ground that they were irrelevant, incompetent, and immaterial. Thereafter, he was informed by the Department of Defense by letter that his refusals denied to the Screening Board information which was essential to a determination of his continued eligibility for security clearance and that without such information the Board was unable to reach the affirmative finding that his continued clearance would be clearly consistent with the national interest, as required by section 2 of Executive Order 10865.

Shortly thereafter Shoultz was notified by his employer that he would be placed on "prolonged leave of absence" without pay until such time as his clearance status was settled. He then brought his action to enjoin the Secretary of Defense from suspending his secret security clearance.

The court granted a temporary restraining order and, after hearing, permanently enjoined the Secretary of Defense from suspending Shoultz's security clearance.[1] It did so on the ground that the procedure adopted in this case had not been specifically authorized by the President or the Congress, citing *Greene v. McElroy*, supra. Pointing out that the "suspension" which entailed a discon-

[1] The order, however, was subject to the qualification that it "does not prevent defendants from taking appropriate action to safeguard the national security under section 9 of the Executive Order 10865 or any other provisions of Directive 5220.6, if they be so advised." (Sec. 9 of E.O. 10865 authorizes the head of the department to exercise a nondelegable power personally to deny or revoke access authorization when he determines that the hearing procedures prescribed in sections 3, 4, and 5 cannot be invoked consistently with the national security. Department of Defense Directive 5220.6, which regulates industrial personnel access authorization, contains hearing procedures similar to those set forth in subsection (k) at page 15 of the bill, to be employed prior to final denial or revocation of access authorization.)

tinuance of the processing of Shoultz's clearance had the same final effect on his livelihood as gave the Supreme Court concern in *Greene*, the district judge said:

"This Court believes that the teaching of *Greene* is that an agency of the federal government cannot, without affording the traditional forms of fair procedure, take administrative action which effectively deprives an individual of his means of livelihood on loyalty or security grounds unless, at the least, Congress (or the President, if he is the source of the power) has expressly authorized the lesser procedure."

(The application of the equitable remedy of injunction, rather than a remedy at law, seems particularly objectionable in this case. The exercise of judicial power to order continuing access to classified information, on procedural grounds, prior to a final determination of the access privilege on the merits by agencies responsible for the safeguarding of such information, poses the gravest dangers to the national security, and would seem to constitute a premature intrusion by the judiciary upon executive responsibilities and a judicial usurpation of executive discretion.)

Relevant provisions of H.R. 15626

The bill contains provisions authorizing the President (1) to discontinue processing an application for clearance or review thereof, and to deny, suspend, or revoke access authorization, when an applicant refuses to answer relevant inquiries in the course of any investigation, inquiry, or proceeding for determination of the individual's fitness or eligibility, and (2) summarily to deny, suspend, or revoke any individual's access to classified information or employment in or access to a defense facility. The individual is entitled, however, in either case to a prompt hearing upon any such denial, suspension, or revocation under the provisions of subsection (k) (at page 15) of the bill. (See *Borrow* v. *Federal Communications Commission*, 285 F. 2d 666 (1960), cert. denied 364 U.S. 892.)

The bill also contains provisions limiting the jurisdiction of courts to grant any restraining order or temporary or permanent injunction having the effect of granting or continuing access to classified information or employment in or access to a defense facility. As to other relief, the jurisdiction of the courts is not limited except that a person adversely affected by the enforcement, execution, or application of the personnel screening programs may not resort to the courts until he has exhausted the administrative remedies provided in the provisions of the bill.

HERBERT SCHNEIDER v. *WILLARD SMITH, COMMANDANT, UNITED STATES COAST GUARD*

U.S. SUPREME COURT, DECIDED JANUARY 16, 1968

The decision

The opinion for the Court was delivered by Justice Douglas. Justice Black expressed concurrence with the opinion, and with a statement of Justice Fortas. Justice Fortas concurred in a separate opinion with which Justice Stewart agreed. Justice White, with whom Justice Harlan joined, concurred in the result. Justice Marshall took no part in the consideration or decision of the case.

In this case the court held that the Magnuson Act gave the President no authority to set up a personnel security screening program with respect to merchant vessels of the United States.

Under the Magnuson Act, 50 U.S.C. 191(b), the President is authorized, if he finds that "the security of the United States is endangered by * * * subversive activity," to issue rules and regulations "to safeguard against destruction, loss, or injury from sabotage or other subversive acts * * * vessels, harbors, ports, and waterfront facilities in the United States * * *."

Pursuant to this authority, the President promulgated regulations giving the Commandant of the Coast Guard authority to grant or withhold validation of any permit or license affecting the right of a seaman to serve on a merchant vessel of the United States. The Commandant is directed not to issue such validation unless he is satisfied that "the character and habits of life of such person are such as to authorize the belief that the presence of the individual on board would not be inimical to the security of the United States."

Schneider applied to the Commandant for a validation of a permit or license to act on board American-flag commercial vessels as a second assistant engineer. In connection with his application, he was asked to answer inquiries relating to his membership in various subversive organizations, together with the listing of names "of the political and social organizations" to which he belonged, including questions related to his membership and activities therein. He admitted membership in the Communist Party and other organizations on the Attorney General's list, but said that he had quit it and other organizations due to fundamental disagreement with Communist methods and techniques. He would not, he said, answer any other questions with respect thereto.

As a consequence the Commandant declined to process the application, relying upon the provisions of the Executive order authorizing him to hold the application in abeyance if an applicant fails or refuses to furnish the additional information sought. Schneider thereupon brought this action for declaratory relief, praying that the Commandant be directed to approve his application and that he be enjoined from interfering with Schneider's employment upon vessels flying the American flag. A three-judge court dismissed the complaint. The Supreme Court reversed.

The Court held that the Magnuson Act gave the President no *express* authority to set up a screening program for personnel on merchant vessels of the United States. Nor did the Court agree with the argument of the Solicitor General that such a power was clearly *implied* in other provisions of the act. Moreover, said the Court, even assuming *arguendo* that the act authorizes a type of screening program directed at "membership" or "sympathetic association," this would raise first amendment problems such as were presented in *Shelton* v. *Tucker*, 364 U.S. 479, which considered the validity of an Arkansas statute requiring a teacher, who was to be hired by a public school, to submit an affidavit "listing all organizations to which he at the time belongs and to which he has belonged during the past five years." If there is to be a congressional delegation of authority in the area of associational freedoms, said the Court, the delegation must be specific and narrowly drawn.

Relevant provisions of H.R. 15626

The bill expressly authorizes the President to institute a personnel screening program to secure the objectives of the Magnuson Act. To the extent the President deems applicable, he is authorized to extend and apply for such purposes the procedures, standards, provisions, and regulations authorized and provided by section 5A of the bill. With respect to the associational activities into which inquiries are made to determine eligibility and access clearance, the bill establishes specific standards and expressly provides that all inquiries shall be confined to those which are relevant or material to the determination to be made. (See subsection (d), page 5.) The bill also contains a provision regulating the jurisdiction of courts similar to that provided with respect to proceedings for access to classified information and defense facilities under section 5A.

The CHAIRMAN. Our first witness this morning is Mr. Liebling with the Department of Defense. Mr. Liebling, you, and if you have associates, your associates may proceed.

Now I will tell you what would be satisfactory, if agreeable to you. If you have a prepared statement, suppose we insert it at this point, then can you summarize it? It would be easier to follow it.

Could you do that?

Mr. LIEBLING. I would prefer to read it.

The CHAIRMAN. All right, you may read it. It is perfectly all right. And then if there are copies, we can follow.

Mr. LIEBLING. Oh, yes, we provided copies. I believe you have them. Yes, you have them, Mr. Chairman.

The CHAIRMAN. Well, for my part, I will listen to you. Go on. Proceed.

STATEMENT OF JOSEPH J. LIEBLING, DIRECTOR FOR SECURITY POLICY, OFFICE OF THE ASSISTANT SECRETARY (ADMINISTRATION), DEPARTMENT OF DEFENSE, ACCOMPANIED BY WILLIAM SCANLON, DIRECTOR FOR THE INDUSTRIAL SECURITY CLEARANCE REVIEW OFFICE; CHARLES TRAMMELL, DIRECTOR OF PLANS AND PROGRAMS; AND CHARLES HAAS, CHIEF, INDUSTRIAL BRANCH, DEPARTMENT OF THE ARMY

Mr. LIEBLING. Thank you, and good morning, Mr. Chairman, Members of the Committee, Counsel. I am Mr. Joseph J. Liebling, and I am the director for security policy of the Department of Defense and I will address myself to the bills, 15626, 15018, and 15336.

I have with me several gentlemen I would like to introduce, who can address themselves to some technical questions, if required by the committee.

The CHAIRMAN. All right.

Mr. LIEBLING. If I may, to my left is Mr. Scanlon, who is the director for the Industrial Security Clearance Review Office.

The CHAIRMAN. Welcome, sir.

Mr. LIEBLING. To my right is Mr. Charles Trammell, who is the director of plans and programs.

The CHAIRMAN. We are glad to have you, sir.

Mr. LIEBLING. Mr. Trammell is a specialist on the regulations and the policies. And at the far end is Mr. Charles Haas, who is the chief of the industrial branch of the Department of the Army, which manages our Industrial Defense Program as the executive agent for the Department of Defense.

The CHAIRMAN. We welcome you.

Mr. LIEBLING. May I proceed?

The CHAIRMAN. All right, go on.

Mr. LIEBLING. I am pleased to have the oportunity to appear before you today to present the views of the Department of Defense concerning three bills pertaining to the Department's responsibilities which are before your committee and which deal principally with the Industrial Defense Program and the Industrial Security Program, both of which are administered by the Department. These are H.R. 15626, H.R. 15018, and H.R. 15336.

Inasmuch as both H.R. 15018 and H.R. 15336 are restricted to just one of these programs, that of Industrial Defense, and are more limited in scope than H.R. 15626, even for the Industrial Defense Program, I believe that I can be most helpful to the committee by briefly giving you the Department of Defense views on those two bills and then proceeding to a detailed discussion of the comprehensive bill, H.R. 15626.

H.R. 15018 expands the definition of "defense facility" in the Subversive Activities Control Act of 1950 by adding criteria to aid the Secretary of Defense in the selection and designation of such facilities.

It repeals the existing section 5(a)(1)(D), a criminal provision of the present act which was held unconstitutional by the United States Supreme Court in the case of *United States* v. *Robel*. It does not substitute a new criminal section under more narrowly drawn legislation as discussed by the *Robel* case, but it does add an amendment to section

5(b) of the Subversive Activities Control Act which authorizes the Secretary of Defense, under regulations to be prescribed by the President, to develop civil administrative machinery to revitalize and broaden the existing Industrial Defense Program.

It also provides for hearings, both for the facility to be designated and for an individual considered for denial of employment in the defense facility, and it also contains certain other useful provisions, such as the specific authority to enforce administrative decisions by application for court injunction and the granting of rule-making authority to the Secretary of Defense.

H.R. 15336 is much more limited in scope even than H.R. 15018. It is directed solely at redrafting the criminal provisions of section 5(a)(1)(D) of the Subversive Activities Control Act in an attempt to provide the more narrowly drawn legislation suggested as needed by the Supreme Court in the *Robel* case.

However, with regard to both H.R. 15018 and H.R. 15336, while we support their objectives, we note that each has technical shortcomings and less than desirable scope, as set forth in our detailed reports on these bills to the committee. I believe that our detailed discussion of H.R. 15626 which follows will adequately cover the Department's views on all three bills.

With regard to H.R. 15626, the Department of Defense supports the broad objectives of the bill but we do have objections to some of the provisions as drafted which I will point out in the course of my testimony. We will provide certain comments and suggestions about the bill based on our experience in both industrial defense and industrial security and we hope that they may be useful to the committee.

We do recognize that certain of the provisions of the bill may possibly be construed to raise questions of constitutionality. If that is the case, we defer, of course, to the views of the Attorney General.

Section 1 of the bill contain the provisions which are of primary interest to the Department of Defense, and it is to this section that most of my remarks will be directed.

Subparagraph (1) of section 1 provides a new definition of "facility" for paragraph 7 of section 3 of the Subversive Activities Control Act. The new definition is more comprehensive than the existing law. It adds to the definition such classes as "industry," "educational institutions," "research organizations," "aircraft," and "vehicles"—all of which are missing from the law at present.

We believe that the proposed revision of this definition adequately sets forth the scope of Department of Defense requirements as reflected in modern industry and technology and consequently is to be preferred over the existing definition.

Subparagraph (2) of section 1 eliminates the existing clauses C and D of section 5(a)(1) of the Subversive Activities Control Act and substitutes a new, and somewhat expanded, clause C. The existing clause C now makes it a crime for a member of an organization registered, or required to register, under the act, to conceal or fail to disclose such membership in obtaining or holding employment in a defense facility.

The bill would eliminate an existing criminal sanction, but, in view of additional provisions appearing elsewhere in the bill, we do not believe that this particular deletion would have any significant, prac-

tical, adverse effect on the overall administration of the Industrial Defense Program.

The existing clause D, declared unconstitutional in *Robel*, made it a crime for a member of a Communist-action organization to be employed in a defense facility. The bill substitutes for this invalid clause one which is almost identical except for added words requiring the individual to have knowledge that he was employed in a defense facility. If the new language is proposed to meet the objections by the Supreme Court to the present clause it may fall short of its objective. The *Robel* case appeared to suggest the need for three elements in new, more narrowly drawn legislation.

The CHAIRMAN. You say it may fall short. Why?

Mr. LIEBLING. I am covering that in my next sentence, Mr. Chairman, if I may.

The CHAIRMAN. All right.

Mr. LIEBLING. These are: active membership, the subscribing or assenting to some unlawful objective, and in an employment or position where the incumbent could affect the national security.

The CHAIRMAN. Well, let me ask you this, because I am very interested in drafting a bill which will comport with the decision.

Mr. LIEBLING. Yes.

The CHAIRMAN. Could you get together with our counsel and give them an idea of what language would satisfy you? I am not saying we will adopt it but we will certainly consider it.

Mr. LIEBLING. We could get together with counsel. We will discuss this with the Attorney General's people, too, if I may.

The CHAIRMAN. Now as I understand the Supreme Court said that that part of the act we are talking about overreached or there was an overbreadth in it.

Mr. LIEBLING. Yes.

The CHAIRMAN. And it therefore was unconstitutional under the so-called free association right in the first amendment.

Mr. LIEBLING. That is right.

The CHAIRMAN. Now let me say this, as a lawyer, and I have been a lawyer for 42 years, I agree that the first amendment protects the right of association, but there is another side to that coin. I happen to be a Catholic and have a pretty long history in that particular religion, and I remember when I was a schoolchild they used to tell me in my catechism class, tell me who your company is and I will tell you who you are.

So it is not as simple as that, saying that your right of association is complete and overreaching. Do you mean to say that if you associate with gangsters you are not going to be tainted?

Now I repeat that, as a lawyer, I respect the constitutional delicacy of the problems. I respect the decisions, I believe in them as a lawyer, but as a matter of philosophy it is quite another proposition because there is an old saying, and you can think of so many examples, that one bad apple would taint the whole barrel, and so very numerous other illustrations that association with evil is liable to taint you with evil.

I just want to expound a little bit on the philosophy of the thing, as distinguished from the constitutional aspect.

Mr. LIEBLING. Thank you, sir.

The Department, as administrator of the program, has no objection to a criminal sanction of this nature. Such a sanction, if it meets constitutional objections, might well have a beneficial effect on the program.

Subparagraph (3) of section 1 would amend section 5(b) of the Subversive Activities Control Act by providing the Secretary of Defense with criteria for use in designating defense facilities. We are aware of the views expressed by Justice Brennan in his concurring opinion in the *Robel* case that congressional adoption of criteria is highly desirable, and as administrator of the program we would have no objection to their adoption.

The criteria in the bill appear to be sound and realistic. They correspond in general to those currently in use in the Department of Defense. At present, our Industrial Defense Program encompasses (1) facilities engaged in important classified military projects; (2) facilities producing important weapon systems, sub-assemblies and their components; (3) facilities producing essential common components, intermediates, basic materials, and raw materials; (4) important utility and service facilities; and (5) research laboratories whose contributions are significant to the security of the United States in relation to our military capability.

We would like to suggest a modification of the criteria in the bill to include plants which, although not presently engaged in production as described in the bill, have been designated for such production in a standby capacity in the event of a national emergency, or have been designated as having a significant emergency mobilization capability.

Subparagraph (4) of section 1 would add a new section 5A to the Subversive Activities Control Act.

Before discussing subparagraphs (a) and (b) of the new section 5A, I think it would be useful to point out the distinction between the Industrial Defense Program and the Industrial Security Program.

The Industrial Defense Program is a highly selective one involving about 3,500 facilities whose continued existence and viability, because of the nature or volume of the product or service, are extremely vital to the national defense effort. Most of these facilities do not have Government contracts, classified or unclassified.

More widely known is our Industrial Security Program, covering in excess of 13,000 facilities, all with classified Government contracts. The principal authority for the Industrial Defense Program is the Subversive Activities Control Act, although one aspect of it encourages voluntary protective actions by industry pursuant to Executive Order 10421, entitled "Providing for the Physical Security of Facilities Important to the National Defense." The authority for the Industrial Security Program stems from Executive Order 10865 and, under present concepts, operates on industry by requiring contractors with classified contracts to accept clauses in their contracts which obligate the contractors to comply with the industrial security provisions set forth in the Department of Defense Industrial Security Manual.

The CHAIRMAN. Sir, would you mind as a matter of protocol? I see our colleague, Mr. Charlie Bennett of Florida, is here, and we usually, as a matter of courtesy, give preference to Members.

Charlie, would you want to file a statement, if you would, at this time?

Mr. BENNETT. Well, this is instructive to me, too. How long would you be going on, sir?

Mr. LIEBLING. Oh, about 30 or 35 minutes.

Mr. BENNETT. Why don't I come back? I have about a 5-minute presentation. I don't want to interrupt him.

The CHAIRMAN. All right, Charlie, we will accommodate you.

Mr. BENNETT. Could I make a statement? I will try to boil it down.

The CHAIRMAN. Do you want to file a statement?

Mr. BENNETT. Well, I would really rather——

The CHAIRMAN. You want to make a 5-minute statement?

Mr. BENNETT. Shall I come back in a half hour?

The CHAIRMAN. It looks like these gentlemen are going to be with us not too long. Maybe you can stay.

Mr. BENNETT. All right, I will stay.

The CHAIRMAN. Proceed, sir.

Mr. LIEBLING. Thank you.

It is apparent from the above discussion that if the bill is enacted, that even on a minimal basis, the activities of the Department would need to be expanded. To accomplish such aspects as go beyond our present programs, the Department would, of course, need additional resources in both manpower and dollars. In considering the workload which may be generated by the Industrial Defense Program, in particular, note should be taken of the number of investigations already being conducted by the Department of Defense.

The recently established Defense National Agency Check Center at Fort Holabird, Maryland, is responsible for all National Agency Checks required by all Department of Defense Components, including those required for our Industrial Security Program. The center completed 1,604,983 NACs in fiscal year 1967. This number represented our needs with respect to all of our programs, including military personnel, defense contractor personnel, and a certain number for our civilian employees not conducted by the Civil Service Commission.

Also, during fiscal 1967, we completed approximately 224,000 background (full field) investigations which represented our needs for this more extensive investigation for all security programs. The additional responsibilities taken on by an expanded program would have to be added to this present workload and is a factor which Congress would, of course, desire to consider.

Numbers of investigations do not tell the whole story. I would like to explain in a different way the extent of our resources and estimated costs now devoted to present security, including civilian, military, and industrial.

The following data are based on statistical information related to investigative operations of the three military departments during fiscal year 1967. The data do not include personnel or costs associated with the evaluation of investigative results, the adjudication of security cases, or the granting of security clearances.

a. *Personnel:* During fiscal year 1967, it is estimated that the equivalent of the following authorized personnel were engaged in conduct-

ing personnel security investigations on military personnel, civilian personnel, and officials and employees of defense contractors:

Army; Defense National Agency Check Center Intelligence Command, 2,596.

Navy; Naval Investigative Service, 1,385.

Air Force; Office of Special Investigations, 1,245.

Total, 5,226.

The CHAIRMAN. A total of five thousand what?

Mr. LIEBLING. 5,226 total resources, including investigative and support personnel, but they do not take——

The CHAIRMAN. You mean investigative personnel?

Mr. LIEBLING. I mean including investigative personnel.

The CHAIRMAN. Okay.

(At this point Mr. Tuck entered the hearing room.)

Mr. LIEBLING. The figure also includes support personnel, Mr. Chairman.

The CHAIRMAN. I understand.

Mr. LIEBLING. The figure does not take into account the approximately 6,390 investigators and administrative support personnel used in special investigative and security activities.

The CHAIRMAN. Thank you. I see.

Mr. LIEBLING. The figures just given do show investigators and administrative support personnel engaged in programs affected by this bill. For comparison, the Department of Defense overall investigative resources are: 11,616 investigative and administrative support personnel, of which 6,263 are investigators.

b. *Costs:* The following cost estimates are based on military and civilian pay, the cost of temporary duty, including travel and per diem costs, the cost of equipment and supplies, and costs attributable to permanent change of station.

Based on these expenses, it is estimated that a National Agency Check currently costs the Department of Defense $4.25. By the end of fiscal year 1969, we believe the cost will be reduced. It is emphasized that this figure is the cost to the Department of Defense only and does not reflect the cost to other Government agencies responding to our inquiries. It also does not represent the administrative cost of the Department of Defense in responding to other agencies. However, we recognize that the Department of Defense is the principal requestor of NAC information.

Based upon the premises I have stated, we find that background investigations had an average cost of $173.14 each during fiscal year 1967. The NAC element is excluded. Also excluded is a small amount of the general overhead administrative costs not listed in the cost elements set forth above.

Total costs for personnel security investigations, including those for industrial security, during the period are as follows:

1. National Agency Checks	$6,821,000
2. Background Investigations	38,744,000
Total	$45,565,000

These figures are based upon the completion of 1,604,983 National Agency Checks and 223,955 background investigations.

c. The allocation of expenses by the three military departments was as follows:

[in percent]

	Army	Navy	Air Force
Salaries (military and civilian)	85	87.5	91.0
TDY	2	2.7	2.3
Equipment supplies	9	5.6	2.9
PCS travel [1]	4	4.2	3.8
Total	100	100.0	100.0

[1] Permanent Change of Station travel.

d. *The Industrial Security Program*: Data for fiscal year 1967 discloses that 217,866 National Agency Checks, or 13.5 percent of the total, and 28,017, or 12.5 percent of the total background investigations, were required in support of the Industrial Security Program.

It is concluded, therefore, that the investigative costs of the Industrial Security Program, included within the overall costs mentioned above, were:

1. National Agency Checks	$920,835
2. Background Investigations	4,843,000
Total	$5,763,835

It is estimated that the equivalent of 679 investigative and support personnel of the military departments support the Industrial Security Program.

With the foregoing as a background, I will now discuss the particular provisions of section 5A of the Subversive Activities Control Act as proposed in the bill.

We feel that the Industrial Security and Industrial Defense Programs authorized by section 5A should be applied and operated in the light of an overall standard. We realize that subparagraphs (a) and (b) of the bill allude to or require determinations in the light of a standard, but additional clarity is desirable.

We suggest as an acceptable standard, for both industrial security and industrial defense, a statement—perhaps in a separate paragraph—such as the following:

> The authorization for access to a defense facility, employment in a defense facility, and access to classified information shall be based on a determination that such access or employment is clearly consistent with the national interest.

We also believe that the term "national interest" is broader than the phrase "national defense and security interests" referred to in subparagraphs (a) and (b) of the bill.

Also, as a general observation, we note that this bill is less specific than H.R. 15018 in providing that the rules of the program's administrator may operate summarily on persons determined ineligible for access or employment at a defense facility or on defense facilities, and also less specific as to authority to enforce determinations by seeking an injunction in the courts. We think that if the present bill is enacted it would benefit by the more specific language, in regard to these particulars, now contained in H.R. 15018.

Subparagraph (a) of proposed section 5A provides new authority solely in the Industrial Defense Program. It would authorize the Pres-

ident to issue appropriate regulations to deny employment in or access to any "defense facility" to anyone who, by virtue of his employment or access, has the opportunity to engage in sabotage, espionage, or other acts inimical to the security interests of the United States, and whose employment or access has been determined to be not clearly consistent with the national defense or security interests, or, to use our recommended phrase, "consistent with the national interest."

The significance of this subparagraph is that it adds important new civil administrative authority to the administrator of the program to deny employment, over and above the criminal sanctions proscribing employment, as provided by the existing law found unconstitutional in *Robel*.

This provision supplies a needed safeguard for defense facilities, with greater flexibility. In earlier testimony before Congress I have stated that under existing law there is no authority to remove such persons as referred to in subparagraph (a) from employment or access, or to deny such persons employment.

For example, although an individual was under indictment, employment could continue for several years while the criminal case proceeded through the courts. This provision may well supply needed administrative flexibility.

Although this provision may well supply administrative flexibility, I cannot overemphasize the fact that it impinges on an unexplored area that is very complex. I refer specifically to the fact that it may be characterized as an unwarranted invasion and obstruction of a person's right to gainful employment. In addition it may be subject to characterization as not within the province of the Department of Defense or directly related to its role. Any impingement on the general public's right to gainful employment raises serious legal and policy questions.

Subparagraph (b) of proposed section 5A would provide a statutory basis for the Industrial Security Program by authorizing the President to institute such regulations and measures as may be necessary for the protection of classified information in any facility, including procedures for determining eligibility for access to classified information.

As the committee is aware, the Industrial Security Program of the Department of Defense has never had a statutory basis, but operates pursuant to the terms of Executive Order 10865. It has in the past been the Department's position that it would not oppose legislation for the program, provided that it was given the same flexibility and discretion which has enabled it to operate successfully under Executive Order 10865.

As you know, the Department of Defense operates the Industrial Security Program for itself and, by agreement, with eleven other agencies in the executive branch of the Government, which brings most of the industrial security requirements of the Government under an effective, centralized administration.

The agencies in addition to the Department of Defense are:

Department of Commerce
Department of State
Department of the Treasury
Department of the Interior

Department of Transportation
Department of Agriculture
Department of Health, Education, and Welfare
National Aeronautics and Space Administration
Small Business Administration
General Services Administration
National Science Foundation

In connection with both the Industrial Defense Program and the Industrial Security Program, we are aware of their special importance to the national interest and their relationship to many Government agencies, as well as to broad segments of defense industry.

Consequently, they must be carefully managed and administratively controlled by the Office of the Secretary of Defense.

I am sure that the committee is also aware that the Department of Justice prepared industrial security legislation in 1965. The bill then proposed by the Department of Justice would have consolidated into law Executive Order 10865 by amending the Internal Security Act of 1950.

That proposed bill was concurred in by the Department of Defense at that time. In keeping with our prior position, the Department interposes no objection to the legislative grant of authority contained in subparagraph (b).

Subparagraph (c) of proposed section 5A provides what appears to be a conventional delegation of executive authority. The Department has no objection to its enactment. However, we suggest that provision also be made for similar authority in subparagraphs (j), (m), (n), and (o) of proposed section 5A. We believe that this would give much more flexibility in administering the programs covered by the bill.

Subparagraph (d) of proposed section 5A empowers the President to "authorize by regulation reasonable inquiries directed to an individual" which are relevant and material to a determination of whether he should be denied access to a defense facility or to classified information. Our experience has shown that investigation—often extensive investigation—is necessary to provide information necessary for a security determination.

This paragraph of the bill, by authorizing reasonable inquiries to the individual, such as questionnaires and fingerprint cards, could be interpreted as precluding other investigative activity. On the other hand, it could be argued that the general enabling provisions of paragraphs (a) and (b) supply the authority for investigative activity. We believe that this issue could be easily foreclosed by the addition of language in subparagraph (d) authorizing such investigation as may be relevant and material to a security determination.

Subparagraph (d) also lists the criteria for use in making security determinations in the Industrial Defense and Industrial Security Programs. These criteria are not exclusive, and additional criteria within the class could also be adopted by the President. Our own experience has shown that these criteria work well and we agree with their inclusion in the bill.

There are, however, changes we would like to suggest in the criteria contained in the bill.

Criterion (10) which deals with the hostage situation seems to be limited in its application to "coercion and pressure" to that situation alone.

The CHAIRMAN. Again, sir, will you get together with our counsel to exchange views on what you are saying now?

Mr. LIEBLING. Yes, we will.

The CHAIRMAN. In other words, we want to be as close to you as we possibly can.

Mr. LIEBLING. Yes, sir, we will provide the detailed comments and work with counsel and the Attorney General and cooperate on all aspects—as fully as we can.

The CHAIRMAN. Do that, please.

Mr. LIEBLING. Yes, sir, thank you.

And there are nonhostage situations, such as blackmail, to which the criterion should be made equally applicable. To broaden this concept, we suggest that the use of language, such as that in criterion S of DoD Directive 5220.6, which provides:

> Any facts or circumstances which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may be likely to cause action contrary to the national interest. Such facts may include: The presence of a close relative of the applicant or of the applicant's spouse in a nation whose interests may be inimical to the interests of the United States, or in satellites or occupied areas of such a nation, under circumstances permitting coercion or pressure to be brought on the individual through such relatives which may be likely to cause action contrary to the national interest. The term close relative includes parents, brothers, sisters, offspring and spouse.

In criterion (16) we would recommend the insertion of the words "frequent or" before the words "habitual use of intoxicants to excess." We believe that the term "frequent use" is sufficiently accurate and precludes the sometimes vexing issue of what constitutes "habitual."

Criterion (17) is an omnibus criterion which uses the words "clearly consistent with the national defense or security interests." We recommend that it be changed to read: "Any other fact, activity, association, condition, or behavior which tends to establish reasonable doubt that the individual is reliable or trustworthy."

The CHAIRMAN. Read that again.

Mr. LIEBLING. "Any other fact, activity, association, condition, or behavior which tends to establish reasonable doubt that the individual is reliable or trustworthy."

The CHAIRMAN. Now wait a minute; you see, you are using that word "association" like I used it a while ago. You see what I mean.

Mr. LIEBLING. Yes, but——

The CHAIRMAN. In a different context.

Mr. LIEBLING. It is within the context of application to other factors possible in the case.

The CHAIRMAN. I agree.

Mr. LIEBLING. The proposed change would give equal breadth to the criterion but would avoid repeating the language of the standard.

Finally, we would suggest a criterion on excessive indebtedness and recurring financial difficulties. We feel that a criterion of this nature is most important.

If the committee wishes, I have here for the record a copy of DoD Directive 5220.6, "Industrial Personnel Security Clearance Program," [1] which contains the criteria referred to, as well as general administrative provisions, which we will make available to the counsel.

The CHAIRMAN. Will you do that for our files, please?

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[1] See appendix, pt. 2, pp. 1677–1709.

Mr. LIEBLING. Yes; and as you suggested, we will work on specific details in the bill with you. Subparagraph (e) of proposed section 5A provides that probable cause for characterizing an organization or individual other than the subject of the proceedings, e.g., as subversive, totalitarian, etc., shall exist when such characterization is based upon investigative reports, findings of congressional or State legislative investigations, common knowledge, and any other information or source of information which the President, or his designee, determines to be substantial or reliable. This rule on characterization of individuals and organizations is much broader than currently in use in the Industrial Security Program.

This paragraph gives the impression, for example, that any Federal investigative agency and Agency Head in the Government, if designated by the President, could officially characterize an organization or an individual as subversive without giving the organization or individual involved a hearing, and that such a characterization could be used to show probable cause in an industrial defense or industrial security hearing.

We believe the language in the bill is too broad to meet the requirements set out by the Supreme Court in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123. In that case the Supreme Court held that before the Attorney General could list an organization as subversive, he must first accord it the opportunity of a hearing. However, on this point we defer to the views of the Attorney General.

Subparagraph (f) of proposed section 5A lists a series of mitigating or aggravating factors to be considered in applying the criteria of subparagraph (e) which I have just discussed. It lists such significant factors as character and history of the organization, the time of membership or association, the individual's knowledge of the nature and purposes of the organization, the nature of the individual's commitment to the organization, his degree of participation, and, most importantly, his intent to assist in achieving the ends or ultimate purposes of the organization. In our present Industrial Security Program we use language generally similar in nature, but the language of this subparagraph is more explicit and detailed and we take no exception to it.

Subparagraph (g) of proposed section 5A requires that inquiries and other procedures involving information of a derogatory nature be conducted with due regard for the protection of the individual or organization from unfair publicity or unjust injury. The Department has always made every effort in all of its personnel security programs to shield the individual from any undue publicity and to protect, as far as possible, his right of privacy. Hearings conducted under the Industrial Security Program are closed to the public, but the applicant is accorded the right to bring his counsel and such witnesses as he may call. The Department is in accord with the provisions of this subparagraph.

Subparagraph (h) of proposed section 5A authorizes denials, suspension, or revocation of employment or access authorization, or a refusal to process an application for such authorization, in cases where the individual willfully refuses to answer relevant inquiries or will-

fully gives false, misleading, or evasive responses on testimony without giving a satisfactory explanation.

As the committee may know, our present Industrial Security Directive contains provisions similar to this subparagraph. However, in *Shoultz* v. *Secretary of Defense* (U.S. District Court, Northern District of California), a Federal district court, has held that the section of the directive which authorizes such procedure is unenforceable because it exceeds the grant of authority in Executive Order 10865. We disagree with the results of this decision and the Department of Justice is appealing it at our request.

However, if the district court decision ultimately is affirmed, we believe that the legislative grant of authority contained in this subparagraph, if enacted, would revalidate this portion of our directive by supplying any lack of authority in the present Executive order.

Subparagraph (i) of proposed section 5A requires that all personnel in our Industrial Security and Industrial Defense Programs be specially trained and qualified and be knowledgeable of the history, origins, and strategy of subversive ideologies, movements, and organizations. Since the inception of the present Industrial Security Program, the Department of Defense has succeeded in building a highly trained corps of professional personnel whose background and experience would meet the standards of this subparagraph. Under a revitalized Industrial Defense Program we would do the same for personnel in that program. We, therefore, offer no objection to the enactment of this subparagraph.

Subparagraph (j) of the proposed section 5A provides for emergency denial, suspension, or revocation of clearances or access to defense facilities. It is apparently intended to cover situations in which, for security reasons, it is important to bar an individual from access or clearance immediately without waiting for the initiation of formal procedures.

Our present Industrial Security Directive contains a similar provision. We recognize the desirability of a similar provision in our Industrial Defense Program. We agree that whenever such a procedure is necessary, the individual concerned should within 30 days either be issued a statement of reasons or be reinstated. We have no objection to this subparagraph.

Subparagraph (k) of the proposed section 5A requires that in all cases, except where emergency action is appropriate under subparagraph (1), no adverse action shall be taken against an individual unless he has been given (1) a statement in writing of the reasons for such action; (2) an opportunity to reply in writing and to present evidence on his own behalf at a personal appearance proceeding; (3) a reasonable time to prepare for such proceeding; (4) the opportunity to be represented by counsel; and (5) a written notice of final action specifying the nature of the finding as to each allegation against him.

The subparagraph further provides for the right of cross-examination and inspection of documentary evidence, with certain limitations in the case of classified information and informants. Here again, the provisions are substantially similar to those contained both in Executive Order 10865 and DoD Directive 5220.6.

We note, however, that neither in this subparagraph, nor anywhere else in the bill, is there a provision authorizing the admission, with-

out authenticating witnesses, of records compiled in the regular course of business. At present, we have such a provision both in Executive Order 10865 and in our Industrial Security Directive. Experience has shown that such a provision saves much time and money at hearings. It does not operate to the prejudice of an applicant because the presumption of admissibility for such evidence is subject to rebuttal. If the committee decides to include such a provision, we suggest that the language of section 5 of Executive Order 10865 be used.

Subparagraph (1) provides the President with the summary power to suspend, revoke, or deny a clearance or access to a defense facility. There is no provision for further delegation of this power. The subparagraph would, therefore, remove the authority presently vested in the Secretary of Defense by section 9 of Executive Order 10865. We, therefore, urge that this subparagraph be amended to authorize the heads of executive departments and agencies to retain authority for this summary power.

Subparagraph (m) of proposed section 5A authorizes reimbursement for losses suffered by an applicant who was barred from employment or access and who has subsequently been found to be eligible for such access or employment.

(At this point Mr. Tuck left the hearing room.)

Mr. LIEBLING. We believe that this subparagraph will provide a satisfactory legislative framework for the reimbursement procedures contained in our present Industrial Security Directive, and would likewise apply to our Industrial Defense Program as expanded by the present bill. We offer no objection to its enactment.

Subparagraph (n) of proposed section 5A authorizes the issuance of subpenas to witnesses at a personal appearance proceeding in the Industrial Defense and Industrial Security Programs. At present, the Department has no subpena powers to compel the attendance of witnesses at personal appearance proceedings of any kind. We have always favored the grant of such authority and, therefore, indorse the provisions of this subparagraph.

We note, also, that there is a provision in this subparagraph which states, "In any such proceeding, the applicant may be called by the Government to testify as a witness as of cross-examination." We presume that this provision authorizes the Government to call an applicant as a witness in a personal appearance proceeding, either with or without his consent. It would also apparently authorize the Government to use cross-examination procedures, such as leading questions, if the applicant is called by the Government as a witness.

At present, in our industrial security hearings, the applicant usually voluntarily appears as a witness in his own behalf and is cross-examined by the Government. In cases where the applicant does not testify voluntarily the Government may call him as a witness and cross-examine him. We would have no objection to a statutory authorization for this practice.

Subparagraph (o) would authorize the same fees, travel expenses, and per diem as those presently authorized in Federal courts. We have no objection to this subparagraph.

Subparagraph (p) provides that the administrative procedure act would not apply to industrial defense and industrial security hearings. As the committee knows, the act, by its own terms, is not presently

applicable so that the subparagraph would merely reiterate this fact. However, we offer no objection to its enactment.

Subparagraph (q) of the proposed section 5A defines classified information as that which is designated as such by an agency of the United States Government.

Although the official designation in Executive Order 10501,[1] and within the Department of Defense, is more detailed, we believe that the definition in the subparagraph is broad enough to encompass both the definition and that of the Executive order.

Subparagraph (r) would prevent any court of the United States from issuing an injunction which would have the effect of continuing employment or access of an individual after such access or employment had been denied, suspended, or revoked in the course of an industrial defense or industrial security proceeding. It would remove such proceedings from the jurisdiction of a Federal court until all administrative remedies had been exhausted. This provision reflects the Department's view. In the *Shoultz* case, cited above, we believe that the issuance of an injunction by the U.S. district court is undesirable. Our contention is that an applicant should exhaust his administrative remedies before he may bring suit in a Federal court. We have no objection to a statutory declaration of what we believe is a sound principle of administrative law.

Subparagraph (5) of section 1 of the bill expands the definition of affiliation contained in section 3 of the Subversive Activities Control Act to include a close working alliance or association between the individual and the organization. We offer no objection to this expanded definition.

Suparagraph (6) of section 1 of the bill amends subsection (k) (13) of the Subversive Activities Control Act to require that the Subversive Activities Control Board publish in the *Federal Register* the fact that its determination has become final. We defer to the Department of Justice and the Subversive Activities Control Board for comment on this provision.

This concludes my formal statement. I appreciate the opportunity to be heard.

Thank you a great deal for your time.

The CHAIRMAN. Well, I want to offer you my personal and official thanks for a very fine contribution here today.

Now, as I understand it, subject to discussions with counsel on the points we exchanged remarks on, you have no objection to the bill?

Mr. LIEBLING. No, not with the recommended changes we have, as you have just indicated.

The CHAIRMAN. Well, get together with counsel, will you?

Mr. LIEBLING. Yes, but generally we support the objectives of the bill.

The CHAIRMAN. We appreciate it very much.

Any questions?

Mr. ASHBROOK. I have no questions.

The CHAIRMAN. Mr. Culver?

Mr. CULVER. No questions, Mr. Chairman. Thank you.

The CHAIRMAN. Counsel?

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[1] See appendix, pt. 2, pp. 1714–1728.

Mr. NITTLE. Mr. Liebling, you have distinguished for the committee the characteristics of your Industrial Defense Program and the Industrial Security Program.

I believe the Industrial Defense Program is administered mainly under the Subversive Activities Control Act as it now exists, in order to carry out the provisions of the act relating to the employment to members of Communist-action organizations in defense facilities.

And that is presently the sole extent of the Industrial Defense Program?

Mr. LIEBLING. No, it is also under Executive Order 10421.[1]

Mr. NITTLE. Would you state briefly what is the substance of that Executive order to which you refer?

Mr. TRAMMELL. That Executive order deals with the protection of facilities that are considered essential to the national defense, and it is an Executive order which authorizes and directs executive departments with primary interests in this field to give very specific guidance to these important facilities, as to how they can protect themselves on a voluntary basis.

It is part and parcel of the things that we do with the defense facilities and——

Mr. LIEBLING. It is a designation of the facilities. It is to indicate, to actually declare certain facilities as sensitive in terms of the national interest.

Mr. NITTLE. I take it then it is largely an advisory program, but the Government exercises no authority to execute or to enforce a personnel security clearance program with respect to those facilities?

Mr. LIEBLING. That is right, with regard to the latter, that is absolutely correct.

Mr. NITTLE. Yes; except where those defense facilities are engaged in classified Government work.

Mr. LIEBLING. Yes; that portion of the Industrial Defense Program which may include a small percentage of facilities which would involve classified information, it would be exactly as you indicated.

Mr. NITTLE. Now you indicate that presently there are about 3,500 facilities that are involved in that Industrial Defense Program, at page 9 of your statement?

Mr. LIEBLING. Yes; that is right.

Mr. NITTLE. You raise the question with the committee that to extend a personnel security clearance program under the provisions of the bill to defense facilities would be, in effect, now to require the Defense Department to conduct investigations with respect to 3,500 additional facilities, over and above the Industrial Security Program?

Mr. LIEBLING. Yes.

Mr. NITTLE. Now as to those 3,500 facilities you indicate that presently the Government does not have Government contracts classified or unclassified with respect to most of them?

Mr. LIEBLING. Well, except for the same small percentages I indicated.

Mr. NITTLE. A very small percentage?

Mr. LIEBLING. Yes.

Mr. NITTLE. Now with regard to the 3,500 facilities in the Industrial Defense Program, would you be able to state approximately how many

[1] See appendix, pt. 2, pp. 1710–1712.

of these are performing production or services under Government contracts?

Mr. LIEBLING. I would say about 20 percent, which would entail the number that are classified.

Mr. NITTLE. Supposing the committee were to consider an amendment to its bill which would limit the application of the personnel security program to those defense facilities that are performing Government contracts.

What effect would that have?

Mr. LIEBLING. Well, we could administer these along those lines, if that limitation were placed, but you would have to go back to the entire subject of the hearing today on how would a judgment or determination be made in an individual case, who would not have access to classified information, who may be an active member of a subversive organization, who may be in a position to commit or perform espionage or sabotage, so some sort of investigative requirement may be required.

But as I say, we could administer it with those conditions.

Mr. NITTLE. I don't quite understand your point there. Do you mean to say that your only concern with the protection of defense facilities would relate to the protection of classified matter?

Mr. LIEBLING. No. I am saying the limitation you would impose would not give us the procedure for investigating personnel who may not be involved in classified information but who may be considered as a risk in terms of your proposal to envelope the Industrial Defense Program in the bill today, as a matter of national security.

Mr. NITTLE. Now the Industrial Defense Program, by the criteria of the bill, would involve a number of facilities, would it not, even though they performed no classified matter?

Mr. LIEBLING. Yes.

Mr. NITTLE. Now let us take the criteria for facilities which this bill would place in the Industrial Defense Program and would subject to a personnel security clearance program.

The first criteria are those facilities engaged in classified military projects. Now that might well, in itself, also be embraced within your Industrial Security Program, which relates solely to classified contracts.

Mr. LIEBLING. Yes.

Mr. NITTLE. As to this first category, would such a facility, engaged in classified military projects, be engaged in that except under a Government contract?

Mr. LIEBLING. I am not too clear on your question.

Mr. NITTLE. Let me rephrase it.

Mr. LIEBLING. Please.

Mr. NITTLE. A classified military project would be one that would be classified by a Government agency for security purposes, would it not?

Mr. LIEBLING. Yes.

Mr. NITTLE. Now it would seem by that definition itself there, where a facility were engaged in such a project, it would be under Government contract, would it not?

Mr. LIEBLING. Yes, it would.

Mr. NITTLE. So we have no problem with that either, because that would likewise be embraced within the Industrial Security Program.

The CHAIRMAN. You agree with that?

Mr. LIEBLING. Yes.

Mr. NITTLE. Now take the second criteria, those facilities engaged in the fabrication or assembly of weapons, weapons or defense systems, missiles, rockets, projectiles, ammunition, explosives, military aircraft, United States naval vessels, armed vehicles, and specialized vehicles and their assemblies or components.

Turn to page 2 of H.R. 15626, where that paragraph is contained—now the question I want to ask is whether there are any defense facilities engaged in the projects described in paragraph 2 which would be so engaged without a Government contract?

Mr. LIEBLING. Oh, no. That is unlikely.

Mr. NITTLE. Take weapons, the manufacture of weapons. Would that be under Government contract?

Mr. LIEBLING. Yes, or a subcontract normally.

Mr. NITTLE. Are there any exceptions to that rule?

Mr. LIEBLING. I beg your pardon.

Mr. NITTLE. Would you purchase weapons that are not pursuant to contract?

Mr. LIEBLING. There may be facilities producing rifles and/or small arms and ammunition which may be used under certain emergency conditions, at a later date.

Mr. HAAS. They may not necessarily be classified contracts, sir.

Mr. LIEBLING. We are talking about contract. Yes, contract or subcontract, normally, it would be true, but it is possible to have facilities not under contract.

Mr. CULVER. Mr. Chairman, may I ask one question?

The CHAIRMAN. Yes.

Mr. CULVER. Mr. Liebling, wouldn't the status of a particular physical plant change from time to time depending upon what Government work was being currently done there?

Mr. LIEBLING. Yes, it could.

Mr. CULVER. For example, you could have a plant that is working on a top secret project 1 month, might just be turning out metal discs the next.

Mr. LIEBLING. Yes, the phasing out of a contract would bring that about.

Mr. CULVER. How would you envision their particular status to be with regard to this legislation?

Mr. LIEBLING. In this particular instance? I might envelope that by the reference I made that this would be a plant on a standby basis for emergency production because it does have the capability to provide us with some product.

Mr. CULVER. So that any industrial operation which—in the entire United States which could be determined then on the subjective basis of the Secretary of Defense could satisfy the criteria of a standby facility in the national interest?

Mr. LIEBLING. I presume that it could be used that broadly, but I would say it is probably unlikely that he would ever do that.

Mr. CULVER. It may be unlikely but he still has the legal authority to make such a sweeping categorization, is that true?

Mr. LIEBLING. It would have that broadness and breadth, yes.

Mr. CULVER. Then you would not envision this in this legislation or, indeed, in your administrative implementation of its directives, any

constant review of the nature of the work actually being done in any of these industries?

Mr. LIEBLING. Going back to your previous question, sir, as to whether or not it would be—no, I think in the implementation of the program or the administrative procedures that would be set up we would have to consider that.

We would have to have a revision of these things on a continuous basis unless we accepted the assumption of what you just discussed.

Mr. CULVER. Do you have any formal program presently under the administration of your current security program whereby you procedurally review on a systematic basis your standby characterizations, or your present defense facility designations?

Mr. LIEBLING. Well, if I may separate the Industrial Security Program from the Industrial Defense, I would like Mr. Haas to address himself to the industrial defense aspect.

Mr. HAAS. Yes, we do have such a program, going continuously.

Mr. CULVER. Would you describe it, please?

Mr. HAAS. This is the Department of Defense Key Facilities List, a classified document. And as such, it is under continuous review, and there are changes and it is dynamic. There are additions, deletions, and changes in the product, based on program requirements, technology in industry, the ratio of supply and requirements.

Mr. CULVER. Then you have a systematic review of both those industries which are characterized as active as well as standby status.

Mr. HAAS. Yes, sir. Standbys are reviewed on the same basis. As a matter of fact, perhaps even more critically, because many of the standby plants as we define them are Government-owned plants.

Mr. CULVER. Could you tell me, in numbers in the past fiscal year, how many firms have moved off the standby status into a status whereby they would not fall under the sweep of this particular legislation?

Mr. HAAS. No, sir, I could not give you a number.

Mr. CULVER. Could you tell me roughly?

Mr. HAAS. It would be relatively few.

Mr. LIEBLING. We can provide it for the record if you want.

Mr. CULVER. Would you provide it for the record?

Mr. LIEBLING. Yes.[1]

Mr. CULVER. I would also be interested in the number with regard to the active designation, defense work status, where you have made a change, where they have been on a top secret project 1 month or producing something of a strategic nature.

Mr. LIEBLING. You want round figures in the readjustment, I presume?

Mr. CULVER. Yes.

Mr. LIEBLING. Yes, we will be glad to provide that also.[1]

Mr. CULVER. Thank you.

You mentioned on page 11 of your statement, Mr. Liebling, that it is apparent there from the above discussion that if the bill is enacted that even on a minimal basis the activities of the Department would need to be expanded, and to accomplish such aspects as go beyond our present programs the Department would, of course, need additional resources in both manpower and dollars.

[1] See June 25, 1968, letter from Department of Defense, pp. 1564–1567.

I wonder, in considering this legislation, if you have made any estimates as to how many people would be affected by the greater sweep of the legislation now before us?

Mr. LIEBLING. The additional resources we need?

Mr. CULVER. No, not on your end. I am talking about the number of people that you feel could responsibly implement the congressional directive of this legislation, how many more people would you estimate would be affected?

Mr. LIEBLING. Frankly we have not gone into that. I have no idea.

Mr. CULVER. It seemed to me you would have to start at that end before you figured out what your costs might be.

Mr. LIEBLING. Yes, we would.

Mr. CULVER. You have no estimates?

Mr. LIEBLING. No.

Mr. CULVER. How many more plants might come under this bill?

Mr. LIEBLING. I don't think the expansion of the number of facilities would be great. The program as it would now without a statutory underpinning has 3,500, and unless the criteria change to how you designate a defense facility as being sensitive, I don't see any appreciable change.

Mr. CULVER. The designations with regard to significantly engaged or providing essential or sensitive communications repair, warehousing services, gas, battery and electric utilities for the foregoing production or services—that would not represent an expansion of your present sensitive areas?

Mr. LIEBLING. No, I don't think it would appreciably change, no, sir.

Mr. CULVER. Do you make a distinction between a person that is an engineer that is engaged in the actual work of a top secret Government contract and a warehouseman that is charged with maintenance of an automobile that is engaged in providing gasoline and services to that company?

Do you make a distinction between his sensitive security status?

Mr. LIEBLING. Well let me provide a similar analogy. We would make a distinction insofar as access to classified information is concerned, or exposure to the military product as such.

But there are instances where you would have to consider him on a parallel basis, or equal basis of sensitivity, if you are talking about an individual who controls a power unit, let's say, one of these maintenance men, as a single man, controlling the power unit for one of our facilities under the 3,500.

Mr. CULVER. Say for purposes of employment, as you can properly understand, your responsibility would be under this statute.

Would you make a distinction between your responsibility to bar employment to a person in the relatively menial status, in providing services to a particular industry engaged in defense work, as opposed to an engineer actively engaged in the top secret contract, per se?

Mr. LIEBLING. I would say that the normal reaction and the normal application would be to make a distinction.

Mr. CULVER. You mean, you would let him go ahead and be hired?

Mr. LIEBLING. The lesser?

Mr. CULVER. The man involved in the menial work?

Mr. LIEBLING. Not necessarily. It depends upon the factors we would use.

Mr. CULVER. But you would feel it perfectly compatible with your responsibilities under this legislation to carve out an exception?

Mr. LIEBLING. Yes, we would.

We have positions that would be designated as sensitive under the program. Also, the facilities' sensitivity would be taken into consideration.

The man's specialty need not be relevant, if we consider the factors as we now have them, and which we suggested to you, we consider all the factors in the Industrial Security Program, which I will swing over into the Industrial Defense Program, so I would have the same factors applicable regardless of the man's employment.

Mr. CULVER. I have nothing further.

The CHAIRMAN. Thank you very much, all of you.

Mr. LIEBLING. Thank you very much.

Mr. SMITH. We have a letter dated April 29, 1968, expressing the views of the Department of Defense with respect to the bill H.R. 15626; a letter dated April 29, 1968, expressing the views of the Department of Defense with respect to a bill H.R. 15018; a letter dated April 29, 1968, expressing the views of the Department of Defense with respect to the bill H.R. 15336; and a letter dated April 23, 1968, expressing the views of the Department of Defense with respect to the bill H.R. 15828.

The CHAIRMAN. I now direct that the said letters from the Office of the General Counsel of the Department of Defense be inserted in the record at this point.

(The documents referred to follow:)

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

29 April 1968

Honorable Edwin E. Willis
Chairman
Committee on Un-American Activities
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Reference is made to your request for the views of the Department of Defense with respect to H.R. 15626, 90th Congress, a bill "To amend the Subversive Activities Control Act of 1950, to authorize the Federal Government to deny employment in defense facilities to certain individuals, to protect classified information released to United States industry, and for other purposes."

The Department of Defense supports the broad objectives of the bill, which would provide new statutory authority to replace Section 5(a)(1) of the Act, one paragraph of which was found unconstitutional by the Supreme Court in the case of United States v. Robel. Also, the bill would provide statutory underpinning for the Department of Defense Industrial Security Program, provide a remedy for the gap in authority indicated by the case of Schoultz v. McNamara, and provide certain other authorities and technical amendments.

The Department of Defense has no objection to the new statutory authority, which would authorize the Department to carry out programs which are its responsibility. However, we would defer to the Attorney General on the question of its constitutionality. The Department offers the following technical comments for consideration.

Paragraph (1) of Section 1 of the bill proposes an expansion of the definition of "facility" in paragraph (7) of Section 3 of the Act. The Department concurs in this provision.

Paragraph (2) proposes a revision of Section 5(a)(1) of the Act. We have no objection to this paragraph.

Paragraph (3) would amend Section 5(b) of the Act. We have no objection to this paragraph.

Paragraph (4) of the bill would insert a new Section 5A after Section 5 of the Act. The proposed Section 5A would provide statutory authority for the Industrial Security Program of the Department of Defense by authorizing the President to issue appropriate regulations to protect classified information furnished to industry. Additionally, it would authorize procedures for denial of employment in defense facilities to persons who, if given the opportunity, might engage in sabotage, espionage, or other activities which would impair the military effectiveness of the United States. It is assumed that this statutory authority and the criteria provided would authorize the Department to continue its Industrial Security Program substantially as administered at present, with a corresponding broadening of Departmental powers over those contained in Sections 4 and 5 of Executive Order 10865, and to institute a stronger Industrial Defense Program for the protection of defense facilities by authorizing the President to extend many of the provisions of the Industrial Security Program to the protection of such facilities. However, it would require security checks of certain employees of several thousand "defense facilities." Additional monetary and manpower resources would be necessary to meet this requirement.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee, but that it has not yet had the benefit of the views of the Department of Justice and other interested agencies on H.R. 15626.

Sincerely,

L. Niederlehner
Acting General Counsel

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

29 April 1968

Honorable Edwin E. Willis
Chairman
Committee on Un-American Activities
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Reference is made to your request for the views of the Department of Defense with respect to H.R. 15018, 90th Congress, a bill "To amend the Subversive Activities Control Act of 1950 to authorize the Federal Government to bar the employment in defense facilities of individuals believed disposed to commit acts of sabotage, espionage, or other subversion."

The Department of Defense is deeply concerned with the security of facilities determined to be essential to the national defense and generally supports the broad objective of H.R. 15018. Certain of its provisions, including those regarding the effect to be afforded mere membership and beliefs in Communist organizations, may raise constitutional questions and we would defer to the Department of Justice in this regard. However, the following technical comments are offered concerning Section 1 of the bill.

We welcome the additional criteria to define the term "defense facility." The criteria are essentially the same as the Department has been using administratively. In view of recent court decisions, we consider it important that these or similar criteria be adopted by the Congress.

Paragraph (2) would repeal Section 5(a)(1)(D) of the Subversive Activities Control Act. We are of the opinion that many of the individual situations are subject to being handled on a case by case basis under criminal sanctions. Therefore, the Department of Defense considers that it would be desirable to retain criminal sanctions, but under more narrowly drawn legislation in line with the guidance furnished in the Robel case.

We are in agreement with paragraph (3), which authorizes the Secretary of Defense to engage in rule-making for the designation of defense facilities.

Paragraph (4) adds a new Section to the Subversive Activities Control Act. The proposed subsection (b) of this new Section authorizes the President by regulation to make "reasonable inquiries directed to an individual regarding his affiliations, memberships, beliefs, or activities, past or present, which are relevant to a determination of whether there are reasonable grounds to believe that he may engage in sabotage, espionage, or other subversive acts as an employee of a defense facility." A screening program to identify persons to whom such inquiries should be directed seems necessary to any effective implementation of this provision. In order to establish an effective screening program, the subsection should be expanded to authorize the Executive Branch to obtain personnel security questionnaires and fingerprint cards from employees and applicants for employment in defense facilities and to require the management of such facilities to submit these to the Government. It should be recognized that this provision of the bill would require security checks of the employees of several thousand defense facilities. Additional monetary and manpower resources would be necessary to meet this requirement.

It is recommended that the proposed new subsection (b) be further amended by deleting therefrom the following words appearing on page 4, in lines 11 and 12, "if there is no reasonably available alternative source of the information sought." Retention of this provision may require substantive proof that there is no reasonably available alternative source of the information sought; it may invite refusals to answer questions on personal history statements on the premise that the Government has the information; it could conceivably be used by subversive-minded persons to ascertain whether the Government has investigative information concerning them; and it would partially destroy one of the Government's objectives in asking for the information, which is to ascertain whether the individual was truthful in executing his application.

It is recommended that a new subsection (c) be added to the proposed new Section 5a and that the present subsections (c), (d), and (e) be relettered. It is recommended that the new subsection (c) authorize the administrator of the program to investigate employees and applicants for employment in defense facilities where such persons would have an opportunity by reason of their employment to engage in sabotage, espionage, or other subversive acts.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee, but that it has not yet had the benefit of the views of the Department of Justice and other interested agencies on H.R. 15018.

Sincerely,

L. Niederlehner
Acting General Counsel

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

29 April 1968

Honorable Edwin E. Willis
Chairman
Committee on Un-American Activities
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Reference is made to your request for the views of the Department of Defense with respect to H.R. 15336, 90th Congress, a bill "To amend the Subversive Activities Control Act of 1950."

The Department of Defense supports the broad objective of the bill to provide new statutory authority to replace Section 5(a)(1)(D) of the Act found unconstitutional by the United States Supreme Court in the case of United States v. Robel. The Department defers to the Attorney General on the question of constitutionality.

Our comments are directed to that part of the bill which amends Section 3 of the Subversive Activities Control Act of 1950, 50 U.S. Code 782.

At present, paragraph 3 (7) of the Subversive Activities Control Act defines a "facility." In our opinion, the revision to this paragraph proposed in paragraph (1) of H.R. 15626 is more desirable and is recommended for adoption. Paragraph (1) of the first part of the bill would designate as a defense facility "any plant, factory, or other manufacturing or service establishment designated by the Secretary of Defense." It omits the word "producing," but more importantly, it also omits the comprehensive listing found in the present law. We believe that these omissions would considerably restrict the scope and discretion of the Secretary in making his determination.

We also believe that the phrase "for the use of the Government" in describing the production or service of a defense facility constitutes a serious additional restriction not found in the present law. We recommend that this phrase be deleted because it would be a major impediment to the present scheme of operating the industrial defense

program. Many of the products and services in defense facilities are not necessarily for the use of the Government or are only remotely intended for Government use. In addition, the fact that an item is for the use of the Government might be difficult or impossible to establish.

The bill requires the Secretary of Defense, in designating a defense facility, to determine that it is of such character as to affect the "military security of the United States." Under the present law the "security of the United States" is the basis for his determination. It is our opinion that the term found in the present law gives the Secretary broader discretion by not restricting him to purely military considerations. Accordingly, we recommend that the word "military" be deleted in paragraph (1) of the first part of the bill.

In regard to the criteria to be used by the Secretary of Defense in designating defense facilities, we believe that the adoption of criteria by the Congress is desirable.

In paragraph (2) of the proposed amendment to Section 3 of the Subversive Activities Control Act, the definition of a "sensitive position" would limit such positions to those requiring access to classified information. This is too narrow a definition inasmuch as a large majority of the approximately 3,500 facilities now designated as defense facilities by the Secretary of Defense under Section 5(b) of the Subversive Activities Control Act is not engaged in activities which require access to classified information. The primary reason for protection of defense facilities, as they are now defined, is to assure that these facilities which are essential to the national defense are not seriously damaged or destroyed by sabotage. It is recommended that the definition, in addition to including positions which require access to classified information, be broadened to include those positions in which the incumbent would have the opportunity to engage in sabotage, espionage, or other acts adversely affecting the security interests of the United States by reason of an employment position in such a defense facility, or by reason of his access to designated restricted or critical areas.

The definition of a "sensitive position" in the bill defines classified information as Secret or Top Secret and eliminates the Confidential category. It is our view that a reduction from the three categories established by Executive Order 10501, (3 CFR, 1949-1953), would impose a degree of inflexibility which would hinder the safeguarding of official information requiring protection in the interest of national defense, and would also be in conflict with

existing international commitments. Consequently, it is recommended that the three categories of classified information contained in Executive Order 10501 be continued.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee, but that it has not yet had the benefit of the views of the Department of Justice and other interested agencies on H.R. 15336.

Sincerely,

L. Niederlehner
Acting General Counsel

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

23 April 1968

Honorable Edwin E. Willis
Chairman, Committee on Un-American
Activities
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Reference is made to your request for the views of the Department of Defense with respect to H.R. 15828, 90th Congress, a bill "To strengthen the internal security of the United States."

The Department of Defense supports many of the broad objectives of the bill. Many of the provisions of the bill are within the purview of other agencies of the Executive Branch and the Department of Defense defers to such agencies for comment on those provisions. Our comments are limited to those provisions which are of direct concern to the Department of Defense.

Section 101 of the bill amends the existing statutory definitions of "war premises" and "national defense premises" now contained in Section 2151 of Title 18, United States Code. The proposed change in the definition of war premises would expand the definition to include premises where war materials may be produced, as distinct from actually being produced, and hence would broaden the impact of the statute to include almost any industrial facility, regardless of its existing production or service capability. While the Department of Defense does not object to a broadening of the statute, we do raise a question as to the efficacy of a statute so demonstrably broadened.

In contrast to the broadening effect of the language just mentioned, we note that, in another respect, the definition has been narrowed,

perhaps inadvertently. This occurs because of the addition of a new phrase, "or other military or naval stations of the United States." This change is susceptible to an interpretation which would exclude a few military entities, such as naval activities which are neither navy yards nor navy stations. To preclude a technical narrowing of the two definitions, it is recommended that both be changed to reflect the broader coverage now provided by 18 United States Code 2151 wherein it provides "other installations of the Armed Forces of the United States or any associate nation."

Section 204 of the bill would make it a crime for an active member of a Communist-action organization who knows and subscribes to its unlawful objectives to be employed in a position which may affect the national security in a defense facility designated by the Secretary of Defense. On the question of the constitutionality of this provision, we yield, of course, to the views of the Attorney General. However, if constitutional, this provision would be of assistance to the Department of Defense by providing new statutory authority to replace that found unconstitutional by the Supreme Court in the case of United States v. Robel. We note that the proposed amendment is designed to meet the objections which the Supreme Court observed with respect to Section 5(a)(1)(D) in the Robel case in that it expressly requires three elements indicated by the court to be essential in new, more narrowly drawn legislation. These are: active membership, the subscribing or assenting to some unlawful objective, and employment in a position where the incumbent could affect the national security.

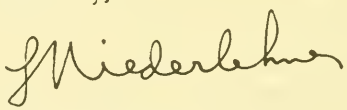
With specific reference to that part of Section 204 which would add a new subsection (b)(1)(C) to Section 5 of the Subversive Activities Control Act, making it unlawful for any officer or employee of a defense facility to contribute services to a Communist organization, it is recommended that a proviso be added which would exclude lawful commercial service performed at ports and airports for Communist countries or any of their agencies pursuant to treaties or international agreements.

Section 301 would make it a felony for any officer of the United States to discipline an officer or employee of the United States because of

testimony given or because of official papers or records furnished the Congress or any Congressional Committee, and Section 302 would make it a misdemeanor in any case not covered by Section 301 where an officer of the United States takes reprisal against any witness who furnishes information or documents to the Congress, Congressional Committees or Subcommittees thereof, the Chairman or members of Committees or Subcommittees, or the head of any committee staff; or who initiates, approves, advises, or conspires to bring about a reprisal. We note that the exception for classified information or unconfirmed derogatory information in Section 301 is not included in Section 302. The purpose of this legislation is understood but the Department of Defense is concerned with its impingement on the responsibility of the Executive Branch. Moreover, the provision that demotion, suspension, dismissal, or retirement of any such witness within a year shall be prima facie evidence that it was a reprisal against the witness, and the proposed criminal penalties would have undesirable effects on discipline within the Department of Defense. This provision appears unnecessary and undesirable and should be deleted.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,



L. Niederlehner
Acting General Counsel

The CHAIRMAN. Charlie, will you come forward?

STATEMENT OF HON. CHARLES E. BENNETT, A U.S. REPRESENTATIVE FROM FLORIDA

Mr. BENNETT. Yes, sir. I have a very brief statement, which I will read.

My assistant has copies, which I guess he has given out or he is giving them out at this point.

Mr. Chairman, I appreciate your giving me this opportunity to appear before the committee in support of legislation to fill recognized gaps in our internal security laws.

As you know last December the Supreme Court declared an important section of the Subversive Activities Control Act unconstitutional. The Court told us that we could not make it unlawful that a member of a Communist organization be employed in a defense facility. This decision—*U.S.* against *Robel*—brought to the public's attention the urgent new need for effective legislation to combat subversives in our defense plants, and 13 members of the House Armed Services Committee joined me in introducing H.R. 15018 on February 1, 1968, to do just this. I am happy to know that so many other Members have also expressed their concern over the need for effective legislation in this field by the introduction of similar legislation.

Under my bill the Secretary of Defense is authorized and directed to designate certain industrial plants or facilities "defense facilities," and the employees of such a faciliity will be required to sign a statement that they know the facility is so designated. The President is then authorized to institute such measures or regulations as may be necessary to bar from employment in such facilities any person concerning whom there is reasonable grounds to believe that he is disposed and has the opportunity by reason of his employment to engage in sabotage, espionage, or other subversive acts against his employer, and therefore against the United States.

The legislation would authorize reasonable inquiries directed to an individual regarding his affiliations, membership, beliefs, or activities, which are relevant to determine whether there are reasonable—and I stress *reasonable*—grounds to believe that he may engage in sabotage, espionage, or other subversive acts as an employee in the defense facility. Before a person could be deprived of employment he would be notified of the reasons for the action proposed against him and given a reasonable opportunity to present information in his behalf and defend himself against such action.

This bill would also give the President authority to seek a temporary or permanent injunction, restraining order, or other order against the management of defense facilities in accordance with the act to prevent the employment of a person found to be disposed toward and having the opportunity to engage in sabotage, espionage, or other subversive acts against his employer.

I believe this legislation meets the test of "fairness" as applied by the Supreme Court. This bill does not infringe upon full freedom of association, yet it provides that important protection our defense facilities need against those who would seek to disrupt or impair the productive capabilities and military effectiveness of our country by sabotage, espionage, and other subversion.

You will note, Mr. Chairman, that my bill does not contain the word "Communist" in it, nor does it refer to "Communist-front organizations." Reasonable inquiry into the affiliations of the employee would be permitted, and I assume and would expect that one of the purposes for any such inquiry would be to ascertain whether the employee was a Communist or had affiliations with Communists. I do not believe, however, that in view of the Court decisions it would be wise for the Congress to list any specific associations or affiliations by statute which would raise the presumption that the employee would engage in sabotage, espionage, or other subversive acts.

I want to make it clear that I feel the objective of Communists in this country is the overthrow of our democratic institutions with the substitution of a totalitarian, communistic society. I have no doubt in my mind that any Communist who would work in a defense facility would engage in sabotage, espionage, or other subversive activities.

It has been asserted that all the *Robel* decision said was that we could not make it unlawful for a Communist to work in defense plants. The Court in the *Robel* case was telling us not only what has been specifically designated here today, but it also seems that they are telling us that we cannot require the firing of a person simply because of his association or affiliation with Communists. The Court asserts that this would violate freedom of association.

It is for these reasons that I recommend that any legislation reported out by this committee in this area not contain language referring to "Communists" or "Communist-front" organizations, but instead set up procedures by which Communists and their kind can be weeded out—with due process—when there is reasonable grounds to believe that they have subversive tendencies.

Recently I came across a lecture by Justice Hugo Black, who, as you may know, held with the majority in *Robel*. In so many words the Justice told the Columbia University Law School audience in March that he feels that once the Supreme Court gets a case in which the constitutional issue is ripe they, the Supreme Court, will declare the statute establishing the Subversive Activities Control Board unconstitutional. Justice Black asserts that the Board "is allowed . . . to curtail the exercise the First Amendment rights of speech, assembly and association."

I believe we must, as Members of Congress, give careful consideration to those remarks and use every means at our disposal to avoid in new legislation unnecessary constitutional issues relating to freedom of speech and association. This is not to say that we should give up our efforts to curb subversion, but this does mean that we must turn our attention toward procedures embodying principles of due process or fairness which will be upheld by the Court as effective in combating subversion.

I think we should make it clear in the legislative history of this legislation that we expect anyone found to have Communist affiliations or associations to be given the closest possible scrutiny, and I would assume that any Communist leanings would immediately raise a flag, a "red flag" in front of the investigators as to the possible disposition of that person toward subversive activities.

I hope what I have said has been helpful to the committee in consideration of this legislation and I want to thank you again for this

opportunity to appear before you. I appreciate your kindness in letting me testify, and thank you very much.

The CHAIRMAN. Well, we are so glad to have you.

Mr. BENNETT. I am glad to be here. Unless there are any questions, I will leave.

The CHAIRMAN. Were you in the room when I drew a distinction between freedom of association under the first amendment and the practical application of that?

Mr. BENNETT. Yes; I thought your words were very well taken, Mr. Chairman.

The CHAIRMAN. Well certainly it is an old adage that one rotten apple at least can contaminate or taint all the apples that are touched. Isn't that true?

Mr. BENNETT. It is true.

The CHAIRMAN. Now certainly it is, and I am not talking about the Constitution, I am talking about practical life. I would doubt that very few parents in viewing the heyday of prohibition would have been proud to see there their son's associations with the racketeers of the day, would they?

I don't suppose so. So there is this kind of distinction in practical life of freedom of association and in the technical aspect of the Supreme Court. Nevertheless if you say too much about it, it appears they are going to knock it out; does it not?

Mr. BENNETT. Yes; the practical problem of this committee is to draft a piece of legislation which will meet the criteria of the Court.

The CHAIRMAN. I am having the Defense Department counsel to consult and I want to do everything I can to draft a bill and to come out with a piece of legislation that will comport and follow the decision so that even the Supreme Court can't knock it out.

Mr. BENNETT. Well, most of the bills that have been introduced—all of them, subsequent to the one which I introduced, contain the phrase "Communist and Communist-front organizations," and in my opinion, it is asking trouble with the Court by putting that in the bill. Therefore I suggest that it be out.

The CHAIRMAN. That will be kept in mind, in going over the bill with a fine-tooth comb.

Mr. BENNETT. Because from what the Court said, it looks as if that might doom your bill to oblivion, by being declared unconstitutional. Of course we want an effective piece of legislation. We want something that is useful.

The CHAIRMAN. Oh, surely.

Mr. BENNETT. Thank you, sir.

The CHAIRMAN. By the way, talking about an effective piece of legislation, last year this committee reported out, and the Congress passed and the President signed, a bill having to do with the Subversive Activities Control Board.

The Senate provided in its version that the act would die unless the Attorney General filed proceedings to keep the Board alive within a year.

In conference between the Senate and House, in which we participated, or members of this committee participated, it was provided further that the Attorney General should report to Congress twice during the year.

The first report is due by June 30 of this year, to tell us what the devil he is doing with the Board; is he bringing cases? Now as far as I know, no case has been brought under that bill, reported out by the committee, passed by Congress, and signed by the President.

Now I understand that the Justice Department is going to testify on this bill Wednesday. I understand at long last, amen, that the Justice Department is going to give its blessing or at least won't have serious objections to this bill. And if they do, I want to give them my great thanks for at long last agreeing with this committee that we do bring up, at least now and then, a product that they can agree with.

Mr. BENNETT. The committee does a good job. God bless you.

The CHAIRMAN. Thank you. The Members think so, because they report out our bills by a majority of 10 to 1, or 20 to 1, but some of the departments refuse to believe it, and some people and newspapers don't believe it.

Thank you very much.

STATEMENTS OF REPRESENTATIVES EDWIN W. EDWARDS, OF LOUISIANA; WALTER S. BARING, OF NEVADA; WILLIAM G. BRAY, OF INDIANA; HERVEY G. MACHEN, OF MARYLAND; DON FUQUA, OF FLORIDA; E. S. JOHNNY WALKER, OF NEW MEXICO; AND CHARLES E. CHAMBERLAIN, OF MICHIGAN; AND FRANCIS W. STOVER, DIRECTOR OF NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS; JOHN W. MAHAN, CHAIRMAN, SUBVERSIVE ACTIVITIES CONTROL BOARD; AND DANIEL J. O'CONNOR, CHAIRMAN, NATIONAL AMERICANISM COMMISSION OF THE AMERICAN LEGION

The CHAIRMAN. Several statements have been received by the committee and will be inserted after Mr. Bennett's testimony.

Mr. SMITH. A statement of Honorable Edwin W. Edwards, the United States Representative of Louisiana; a statement of Honorable Walter S. Baring, the United States Representative from Nevada; a statement of Honorable William G. Bray, a United States Representative from Indiana; a statement of Honorable Hervey G. Machen, a United States Representative from Maryland; a statement of Honorable Don Fuqua, a United States Representative from Florida; a statement of Honorable E. S. Johnny Walker, a United States Representative from New Mexico; a statement of Francis W. Stover, director, National Legislative Service, VFW.

The CHAIRMAN. Is that for or against?

Mr. SMITH. For.

A letter of April 23, 1968, from Honorable John W. Mahan, Chairman, Subversive Activities Control Board.

The CHAIRMAN. Is he for or against?

Mr. SMITH. He is partially each way.

The CHAIRMAN. All right.

Mr. SMITH. On H.R. 15828 a letter dated April 26, 1968, from Honorable John W. Mahan, Chairman, Subversive Activities Control Board, expressing views on H.R. 15626.

The CHAIRMAN. Favorable views, right?

Mr. SMITH. Yes.

A statement of Daniel J. O'Connor, chairman of the National Americanism Commission of The American Legion, on H.R. 15626.

The CHAIRMAN. Favoring?

Mr. SMITH. Right.

(The documents referred to follow:)

STATEMENT OF HON. EDWIN W. EDWARDS, A U.S. REPRESENTATIVE FROM LOUISIANA

Mr. Chairman and Members of the Committee:

As you know, I am a cosponsor of the bill now before you, H.R. 15626. I believe this proposed legislation is vitally necessary in the interests of our national security.

The bill deals with security measures relating to defense facilities. This is a vital area calling for close and rigid control. That which constitutes a "defense facility" is expressly and specifically defined in the bill, leaving no room for misunderstanding and no room for the charge of "vagueness." The definitions are clear and comprehensive covering the field of Government operations to which the bill is directed.

An important part of the bill is that which would restore life to section 5(a)(1)(D) of the Subversive Activities Control Act of 1950, which made it unlawful for members of Communist-action organizations to engage in employment in defense facilities. In the case of *United States* v. *Robel* the Supreme Court in its decision of December 11, 1967, held that section of the law involved to be unconstitutional for "overbreadth," in violation of the right of association protected by the first amendment. The bill, by its terms, seeks to narrow the interdiction of the section and to supply safeguards to meet the objections of the Supreme Court, thus retaining the effectiveness of the basic purposes of that section of the Act of 1950.

I doubt if any reasonable man with due regard for the national security of this country can be heard to say that members of Communist-action groups should be given employment in such sensitive areas as our defense facilities. H.R. 15626 seeks to see to it that they are not permitted employment in such vital areas.

Make no mistake about it, Communist influences are at work in this country today. Never before in our history has the Government needed more protection for its essential activities than it needs today. Communist-action, Communist-dominated, and Communist-infiltrated groups are active, seeking to take advantage of any and all of our weaknesses to make this country an easier prey to Godless communism. The damage that can be done to our national security in such sensitive places as defense facilities is indeed apparent and very real.

The bill authorizes a comprehensive security program in the fields to which it pertains. It authorizes measures for a security clearance program for workers in defense facilities; gives the sanction of the Congress to measures for an industrial security clearance program for protection of classified information released to industry engaged in essential work for the Government; it gives express congressional authority to institute a personnel security program for access to vessels, harbors, ports, and waterfront facilities under the Magnuson Act. Moreover, it not only authorizes the strengthening of security measures, but provides for safeguards against any possible maladministration of the law that might be offensive to individual freedoms.

I am proud to be one of the sponsors of this bill introduced by your distinguished chairman, Edwin Willis, in the interest of our national security. It deserves enactment into law by the Congress and vigorous enforcement by the executive department.

STATEMENT OF HON. WALTER S. BARING, U.S. REPRESENTATIVE AT LARGE FROM NEVADA, ON BEHALF OF H.R. 15649, TO AMEND THE SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

Mr. Chairman, I thank you for the opportunity to make a statement on the legislation before this committee, H.R. 15649, and related bills. I am sure I do not have to stress before this committee the urgency and necessity of this legislation.

For many months now, the newspapers, radio, and television stations have carried stories on action taken by the Supreme Court of the United States interpreting, limiting, and even invalidating legislation previously enacted by Congress. However, neither this bill nor any of its provisions is intended to challenge the Court with respect to its decisions. The principal purpose of the bill is to plug the recognized security gaps brought about by the recent Supreme Court decisions.

Mr. Chairman, like you and the other esteemed members of this committee, I have received numerous letters of complaints from Nevadans voicing extreme anger over the Supreme Court's decision overturning Federal legislation concerning the employment of a member of the Communist Party in Seattle, Washington, shipyard which, by the way, the Secretary of Defense had designated as a "defense facility."

"What are you going to do about it?" they asked. It is my hope, Mr. Chairman, that the bill before you will be the answer to their questions.

I feel, Mr. Chairman, that this bill is a very comprehensive one. It is well balanced and contains and covers a variety of situations. The bill contains criteria against teaching or advocating the forceful, violent overthrow of the Government, and against the activities of Communist organizers, and acts, which, if committed in time of war, would constitute treason under the Constitution.

Mr. Chairman, it is time that this Congress stand up and show some good old American intestinal fortitude and crack down on those who advocate becoming buddy-buddy with Russia and its satellites. The American people are sick and tired of the actions taken by certain people within our governmental structure—and those outside of our Government who carry enough vocal and financial power to sway the thinking of those inside our Government—of slowly, but surely handing over this country to communism.

Our Constitution grants the right to dissent—but the dissent we have seen and heard ever since the Vietnam war borders on the fringe of outright treason.

Any person who owes allegiance to the United States and yet gives aid or comfort, knowingly and willfully, to the Viet Cong or to North Vietnam or to any other nation or armed group engaged in open hostilities against the United States, hostilities in which American boys are fighting and dying, should be punished.

In closing, Mr. Chairman, I would like to point out that where a decision of the Supreme Court has found an act of Congress to be unconstitutional, it is the obligation of Congress to frame and enact further legislation for the purpose of dealing with the problem.

I firmly believe that this bill meets this problem head on and I hope, Mr. Chairman, that you and your excellent committee will give your unanimous approval to the legislation before you. Thank you.

STATEMENT OF HON. WILLIAM G. BRAY, A U.S. REPRESENTATIVE FROM INDIANA

The Supreme Court's decision in the case of *U.S.* v. *Robel*, allows members of the Communist Party to work in defense plants. On account of this, we are impelled to act upon this proposed legislation which will insure our country the right of defending itself from internal dangers.

The Supreme Court's decision was based on a legal facet of the Constitution, that of the right of association as protected by the first amendment. This basic right cannot be disputed, for America's heritage of freedom is insured by its Constitution. But the right is not absolute. This decision ignored the fact that to survive, a government must protect itself against its enemies who would destroy it by force.

It is no secret that countries have spies employed throughout the world to obtain facts about military, political, and economic developments in other countries. This is especially true of Communist countries. However, it is more difficult to conduct espionage in a totalitarian state such as Russia or Communist China than in countries where people have more freedom of movement and are not under such close supervision.

According to the Communists' views, they are justified in using every possible means such as sabotage, espionage, or other subversive acts in order to obtain information valuable to their country and that can be used to undermine and destroy any non-Communist country. Under communism, the only function of the individual is to serve the state.

Must we extend the freedom of association clause in its entirety to members of the Communist Party, thus enhancing the possibilities of sabotage, espionage, or other subversive acts against the United States? Should individuals dedicated to our destruction be permitted to work in those sensitive areas such as defense facilities, where their doing so can aid that destruction? Why should we enable the Communists to use our freedoms as a means of gaining their goals, goals which would ultimately replace our inalienable rights with Communist doctrines?

The problem we are faced with not only today, but yesterday and tomorrow, is whether or not a nation has the right to limit any freedom of a group dedicated to our destruction to insure complete freedom for the majority. A Roman proverb says, "The safety of the people must be the supreme law." The necessity to impose certain limitations on the right of association clause is essential for the internal security of the United States.

STATEMENT OF HON. HERVEY G. MACHEN, A U.S. REPRESENTATIVE FROM MARYLAND

Mr. Chairman and Members of the Committee, I represent the Fifth Congressional District of Maryland which is composed of Prince George's and Charles Counties, Maryland.

I appear before you today to testify in behalf of H.R. 15018, which I cosponsored. The Supreme Court recently struck down a provision making it a crime for a member of the Communist Party to work in a United States defense plant. It found that "in the balance of Constitutional rights," freedom to associate vastly overshadows the right of the Government to guard against sabotage and espionage in its national defense industries.

The Court has found time and time again that the rights of the criminal weigh heavier in the balance than the rights of society to its security. The battle we wage against crime in the streets—a war of compelling proportions—is hindered by Court decisions which provide one obstacle after another to the apprehension and successful prosecution of criminals.

The winning of the war against Communist aggression is rendered increasingly more difficult by decisions which invite the spread of the conflict to our own land. No one denies that the individual and the accused have rights which must be preserved from encroachment; yet, so too must the rights of the whole society. It is in the consideration of the interests of this group that I cosponsored H.R. 15018.

The enactment of this legislation is, I believe, clearly in the best interests of the Nation. Certainly, no patriotic American can quarrel with the intent of this legislation to bar from employment in our defense facilities individuals believed disposed to commit acts of sabotage, espionage, or other acts of subversion. Exclusion of such individuals would not be done arbitrarily under the provisions of this bill. Anyone barred under these provisions would be given a reasonable opportunity to defend himself against such action including, if he requested, a hearing.

Whereas our Constitution has been an extremely durable document, needing few amendments to guide a changing society, decisions such as those made by the Court in areas adversely affecting our national defense posture must be reversed. The rulings of a body of nine men, appointed for life, must be subject to final approval by the whole society affected by them.

From the beginning of its history, this country has found it wise to provide checks and balances among the various branches of Government. My bill continues that ideal. It states that it is the people and through them their elected representatives who shall have the final word as to who shall be employed in facilities integrally a part of our national defense system and who shall not. Therefore, I urge you and the members of the committee, Mr. Chairman, to report this bill to the House for consideration so that the people can be heard clearly in this matter.

STATEMENT OF HON. DON FUQUA, A U.S. REPRESENTATIVE FROM FLORIDA, ON H.R. 15272

Mr. Chairman. It would seem that one of the basic responsibilities of any nation is to protect its people.

A recent decision of the Supreme Court has ruled unconstitutional certain sections of the Subversive Activities Control Act of 1950. It is obvious that I disagree with that ruling by the introduction of my bill which is part of these hearings.

The highly automated plants of today are open to sabotage, and I think it the responsibility of the Congress to provide such plants with safeguards against those who gain membership in organizations that have as their purpose the violent overthrow of our form of government.

The purpose of this legislation is to institute reasonable measures and regulations to provide sensitive facilities against possible sabotage, espionage, or other subversive activity.

This committee is perhaps more aware of the designs of enemies of this Nation and the lengths to which they will go to subvert this land than perhaps any other.

I urge that very careful consideration be given to the proposals now pending.

Stated simply, we are attempting only to give this Nation certain reasonable personnel screening procedures in an effort to protect vital national interests. This legislation accords maximum individual freedom coupled with an overriding need for national security.

I urge that my bill or a similar measure be reported to the House for consideration.

STATEMENT OF HON. E. S. JOHNNY WALKER, A U.S. REPRESENTATIVE FROM NEW MEXICO, IN SUPPORT OF H.R. 15018

Mr. Chairman, last December the Supreme Court struck down a provision of the Subversive Activities Control Act of 1950. The important provision declared unconstitutional made it a crime for a member of the Communist Party to be employed in "any defense facility," as that term might be defined by the Secretary of Defense.

Now Congress must search for another effective means of protecting our national interest. I firmly believe that H.R. 15018 will provide that protection without unnecessarily intruding on the freedoms we seek to strengthen.

The Supreme Court noted, by way of justification, in *U.S. v. Robel*, that the questioned provision in the act infringes on workers' rights to freedom of association which is guaranteed by the first amendment of our Constitution. It should also be observed, however, that the decision was not without dissent. Justice Byron R. White and Justice John M. Harlan pointed out that the first amendment rights should be balanced against national needs. Barring Communist Party members from employment in defense plants making up less than 1 percent of the Nation's industry is a small price to pay to protect the country from sabotage and espionage, the dissenting Justices further noted.

The amendment I support will clearly authorize the Federal Government to deny employment in defense facilities to individuals believed disposed to commit acts of sabotage, espionage, or other subversive acts clearly detrimental to our way of life.

This bill authorizes and directs the Secretary of Defense to designate certain industrial sites as "defense facilities." The employees will be required to sign a statement indicating that they are aware of this designation. The President would then be authorized to take whatever action deemed necessary to deny employment to anyone whose background reveals there are reasonable grounds to believe that the prospective employee is disposed and has the opportunity, by reason of his employment, to engage in sabotage, espionage, or other subversive acts against his employer.

The inquiries into a person's background would be reasonable, but naturally as reliable as possible, and concern the employee's relevant beliefs, activities, affiliations, and memberships. Prior to his suspension, the employee would be notified of the reasons for the actions being taken against him and given the opportunity to present information in his own defense.

Giving the President clear authority to seek a temporary or permanent injunction, restraining order, or other order against the management of defense facilities under the terms of this legislation will not, in my opinion, infringe upon our cherished right of association. It will, however, better enable us to protect all of our cherished rights and privileges.

STATEMENT OF HON. CHARLES E. CHAMBERLAIN, A U.S. REPRESENTATIVE FROM MICHIGAN, ON H.R. 15018, TO AMEND THE SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

Mr. Chairman, I appreciate being given this opportunity to appear before your committee and to testify in support of H.R. 15018, a bill which would permit the Government to bar certain individuals from employment in defense facilities.

It is perhaps symptomatic of the problems spawned by modern technology that we, here on Capitol Hill, received an offer by a commercial firm a year or so ago to "sweep" our offices to ensure that we were not being "bugged." Every week one may find in the newspapers advertisements for commercial firms which will erect security barriers on the one hand, or penetrate other security barriers on the other. Elsewhere one can find firms that will specialize in other subtle intricacies of the intelligence profession.

While these commercial threats are serious, one must recognize that the expertise so advertised can be far more perfectly accomplished by national governments, which can professionalize to the greatest possible degree the arts of espionage, sabotage, and subversion. Instances of foreign-supported clandestine and covert activity in America are legion, and this country has had to learn some painful lessons at the hands of our enemies.

It is an unfortunate fact of the present day that we are faced with a continuing and constant problem of anti-American activity within our borders, some of it readily visible, other less so. Among the most important targets in this activity are manufacturing facilities which are related to our national defense. The advantages which can accrue to our enemies through successful penetration of these activities are great. Generally one may expect that the goal of such a penetration will include the gathering of vital information, although in conditions of international tension or war, the primary goal might be sabotage. In either case, the loss to our national defense effort is unacceptable, and the detection of such enemy effort after the fact will not repair the damage that has been done.

It should be abundantly clear that the miniaturization of destructive weapons, the refinement of toxic chemicals, the ubiquity of copying machines and miniature cameras, and other technological advances have given the single agent a tremendous potential for damaging activity. Instruments of mass destruction can now be carried in a briefcase, while atomic secrets can be carried away on the head of a pin. Espionage can go undetected forever, and sabotage cannot always be traced.

In the face of such threats, it is clearly in the national interest to investigate most carefully the relative risks to our national security that may be posed by the employment of persons of questionable mental stability or loyalty in defense facilities. It is not enough that we just keep records of certain persons, or to prosecute espionage cases after the fact. Our national defense and the most basic good judgment require that we have the legal means to avoid catastrophe.

I would emphasize, Mr. Chairman, the *preventive* nature of this legislation. The activities of enemy agents or misguided individuals in this area do not lend themselves to remedy, and the damage done may well be irreparable. Appropriate legislation should be enacted. The barriers must be carefully drawn, constitutionally correct, and strictly enforced. If our country is to have a reliable national defense, it is fundamental that we must provide for the security of our defense industries.

STATEMENT OF FRANCIS W. STOVER, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES, WITH RESPECT TO H.R. 15626 WHICH WOULD AMEND THE SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950 TO AUTHORIZE THE FEDERAL GOVERNMENT TO DENY EMPLOYMENT IN DEFENSE FACILITIES TO CERTAIN INDIVIDUALS, TO PROTECT CLASSIFIED INFORMATION RELEASED TO UNITED STATES INDUSTRY, AND RELATED MATTERS

Mr. Chairman, thank you for the invitation to present the views of the Veterans of Foreign Wars with respect to H.R. 15626, which would plug some of the loopholes in the Subversive Activities Control Act of 1950 caused by recent court decisions and greatly strengthen the act in other areas.

My name is Francis W. Stover and my title is director of the National Legislative Service of the Veterans of Foreign Wars of the United States.

The Veterans of Foreign Wars strongly supported the legislation which finally became the Subversive Activities Control Act of 1950.

The Veterans of Foreign Wars has, down through the years, supported liberalizing amendments to this act which have strengthened and improved the effectiveness of this most important law.

Most recently, the Veterans of Foreign Wars was extremely disappointed, for example, when the Congress approved legislation which could have the effect of putting the Subversive Activities Control Board out of business. I am referring to Public Law 90–237 which, among other things, stipulates that the Subversive Activities Control Board shall cease to exist on June 30, 1969, unless by December 30, 1968, a proceeding under the Subversive Activities Control Act shall have been instituted before the Board and a hearing shall have been conducted by the Board. Unless, therefore, the Attorney General shall institute proceedings before this Board before the end of this calendar year, it could well be the death sentence of the Subversive Activities Control Board.

While the provisions of H.R. 15626 do not relate directly to the Board, nevertheless approval of this bill would be a tremendous step forward to strengthen the Subversive Activities Control Act of 1950.

The authority for the Veterans of Foreign Wars to support this legislation is found in a resolution which was adopted at our 68th National Convention and identified as No. 168, entitled "Strengthen Internal Security Act," and it reads as follows:

"Whereas the Internal Security Act of 1950 is this country's major anti-subversive law; and

"Whereas the world Communist conspiracy has spread its tenacles and devoured an ever increasing number of formerly independent nations; and

"Whereas the Communist Party of the United States, as part of the world Communist conspiracy, has stepped up its activities in its designs upon America's future and poses an ever increasing danger to our national security; and

"Whereas the Congress of the United States has the duty and obligation to enact legislation within the framework of the Constitution adequately to protect the national welfare from the nefarious designs of organized Communism; and

"Whereas recent court decisions make necessary amending the Internal Security Act to conform with such decisions and accomplish its purposes of disclosing those organizations and individuals which are operating in the United States as an arm of the International Communist movement: Now, therefore, be it

"*Resolved, by the 68th National Convention of the Veterans of Foreign Wars of the United States*, That we petition and entreat the Congress immediately to enact, and the President forthwith to sign, legislation such as companion bills H.R. 10390 and H.R. 10391 bipartisanly sponsored measures to amend and strengthen the Internal Security Act of 1950."

Resolution No. 168 and an omnibus resolution entitled "To Protect the Security and Sovereignty of the United States" sum up in a most definitive manner the position of the Veterans of Foreign Wars concerning Communists, subversive groups, and their adherents whose efforts are bent on destroying the sovereignty of the United States and the continuance of this Republic. Resolution No. 17 reads as follows:

"Whereas, according to its Congressionally bestowed charter, one of the major reasons for the formation of the Veterans of Foreign Wars was 'To preserve and defend the United States from all enemies, whomsoever;' and

"Whereas the leaders of the world Communist movement have openly threatened the United States and proclaimed the desire and intent of world Communism to conquer the free nations of the world by all possible means, including violent overthrow of our government: and

"Whereas certain subversive groups and movements and their adherents have not ceased their efforts to advance ideologies that would destroy the sovereignty of these United States: Now, therefore, be it

"*Resolved, by the 68th National Convention of the Veterans of Foreign Wars of the United States*, That—

1. We reaffirm our complete, unwavering opposition to Communism in all its forms, both foreign and domestic, and will resist all Communist policies against the United States and all persons who support, defend, aid and abet them.

2. We reaffirm our opposition to world government, such as Atlantic Union or any similar scheme which would ultimately surrender the sovereignty of the United States of America.

3. We strongly support a United States foreign policy designed to aid the liberation of the enslaved peoples of the world.

4. We oppose any United States aid (direct or indirect, military or financial) to Communist nations.

5. We oppose any weakening of the basic security laws of this Nation, including the Internal Security Act, Communist Control Act, and the Smith Act.

6. We endorse and recommend the continuation of the work of the Federal Bureau of Investigation, and other federal and state agencies charged with protecting the internal security of the United States.

7. We endorse and recommend the continuation of the Senate Internal Security Subcommittee, the House Committee on Un-American Activities and any other Congressional Committee formed for the purpose of protecting our country from Communist and other subversive activities."

In these most trying and vexing times, it is incumbent upon all Americans to take every step to insure that our security from within is protected. With Communist-dominated nations harrassing and, in Vietnam and other areas, killing Americans, the problem is not a theory, but a reality.

Unfortunately, there are always those in our midst who subscribe to the ideologies and views of some or all of these Communist nations. They are the ones who, in many instances, take advantage of our hard-won freedoms to carry out their sinister purposes to ultimately destroy the very institutions they hide behind for protection when they are exposed for what they are.

Pursuant to our mandates, as outlined above, the Veterans of Foreign Wars, therefore, indorses the purpose and intent of H.R. 15626. It is our hope and strong recommendation that this legislation be favorably considered and reported to the House in line with these mandates of our organization.

Thank you again for the privilege and opportunity to express the views of the Veterans of Foreign Wars concerning this most important legislation.

LETTERS FROM SUBVERSIVE ACTIVITIES CONTROL BOARD REGARDING H.R. 15828 AND H.R. 15626

SUBVERSIVE ACTIVITIES CONTROL BOARD,
OFFICE OF THE CHAIRMAN,
Washington, D.C., April 23, 1968.

HON. EDWIN E. WILLIS,
Chairman, Committee on Un-American Activities,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN WILLIS: This is submitted in response to your request for our views on H.R. 15828, the proposed "Internal Security Act of 1968." We limit our comments to the provisions which would be administered by this Board or otherwise involve the Board.

Section 201 (1), beginning at line 20 on page 4, would change the term of each member of the Board from five years to seven years for each member appointed after January 1, 1969. We assume that the purpose is to preserve the expertness or experience which the members of the Board acquire by reason of their service. Cases in the Board have been quite lengthy in many instances. We believe that the longer terms are desirable so as to give better continuity in the handling of cases.

Section 201 (2), line 9, page 5, would vest in the chairman of the Board alone the authority and responsibility for the internal administration of the agency, with certain exceptions. At the present time each member has an equal vote as to all personnel and administrative matters. Enactment of the provision would make the Board similar in this respect to most of the other adjudicatory agencies. This frees the other members from administrative details so as to concentrate on the substantive work. We favor enactment of the provision.

Subsection (3) of section 201, would place the members of the Board in Level IV of the Federal Executive Salary Schedule instead of the existing Level V, and would change the chairman from Level V to Level III. This is a matter for the Congress. The apparent purpose is to make compensation for service on the Board the same as that for comparable agencies as listed in the Executive Salary Schedule.

Section 202, line 11, page 6, is aimed at preventing the frustration of Board determinations which in some instances in the past has resulted from delays in the appellate court review of the Board actions. Board orders speak as of the time of the inquiry by the Board. Sometimes the exercise by the aggrieved

party of the right to judicial review results in the passage of considerable time before the appeal is decided.

The courts have held that they will consider the merits of an appeal only where the record is reasonably current. They have remanded cases to the Board for findings as to the current status of organizations when, through no fault of the Board, the cases lingered in the courts for a considerable time. This "staleness doctrine" seems to imply that the Board must perform the impossible duty of determining what the status of an organization will be a year or more in the future. It puts a premium on dilatory tactics during judicial review of Board determinations.

The existing statute contains ample safeguards, through redetermination proceedings, for any group that bona fide changes its status following a Board determination. We favor the proposal to require the appellate courts to decide the validity of an order of the Board at the time the order was issued by the Board.

Section 203, line 19, page 6, contains proposed Congressional findings of fact on the danger to the national security which reasonably can be said to exist if members of Communist-action organizations continue as employees of a defense facility after the organization has been determined by the Board to be of such type and the individuals have knowledge or notice thereof and elect to remain members.

Findings of fact are, of course, a matter for Congress. The proposed findings seem warranted from conclusions drawn by the Board in formal proceedings and from decisions and opinions of the courts. Your committee may wish to consider inserting the word "final" between the words "an" and "order" in line 8 at page 7.

Section 204, beginning at line 13 of page 7, contains a number of provisions aimed at preventing the employment in defense facilities of knowing and intentional Communists. We agree with the inherent principle that Communists operating in this country under foreign control and direction should not have access to any national security information.

It is clear under the Supreme Court's decision in the Robel case that there must be adequate standards in order legally to bar Communists from employment in defense facilities. The proposed provisions contain standards which were lacking in the provision declared unconstitutional in the Robel case. We have no opinion on whether the factors supplied by the provisions of H.R. 15828 are adequate in all respects. The provisions seem to us to be worthy of enactment so as to have them tested in the courts.

The Bureau of the Budget has advised by telephone that there is no objection to the submission of these views.

Sincerely,

JOHN W. MAHAN, *Chairman.*

SUBVERSIVE ACTIVITIES CONTROL BOARD,
OFFICE OF THE CHAIRMAN,
Washington, D.C., April 26, 1968.

HON. EDWIN E. WILLIS,
Chairman, Committee on Un-American Activities,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN WILLIS: This is written in response to your request for our views or comments on H.R. 15626, 90th Congress, which contains provisions aimed at protecting the security of defense facilities. We note that H.R. 15828, which was also introduced in the 90th Congress, contains provisions having the same basic purpose.

We certainly agree with the purpose of barring active, knowing Communists and other security risks from access to classified national security information. We agree that in the light of court decisions express legislative authorization and specific standards are necessary in order to carry out this purpose.

H.R. 15626 takes a quite comprehensive approach to the problem. Much thought and effort was obviously given to drafting the proposed legislation. We have not attempted a line-by-line study of the procedures, standards, and criteria set forth in the bill. We defer to the Departments of Justice and Defense and the other departments and agencies which have been closely involved with the present industrial security program.

The proposed new section 5(a)(1)(C) would make it unlawful for any member of a Communist-action organization to engage in any employment in any

defense facility (lines 12–15 at page 2). H.R. 15828, on the other hand, applies only to "active members" who have "subscribed or assented to any unlawful objective of such organization" (page 8 beginning at line 13). The application to all members as is done in H.R. 15626 is of questionable legality under the Supreme Court's decision in the *Robel* case and cases like *Dombrowski*. We recommend consideration of modifying the H.R. 15626 provision along the lines of the provision in H.R. 15828.

The procedures, standards, criteria and guidelines set forth in the bill seem to take care of the points covered by the various, applicable court decisions. While some are perhaps rather broad, we do not have any informed basis for suggesting changes.

The Bureau of the Budget has advised by telephone that there is no objection to the submission of these views.

Sincerely,

JOHN W. MAHAN, *Chairman.*

STATEMENT OF DANIEL J. O'CONNOR, CHAIRMAN, NATIONAL AMERICANISM COMMISSION OF THE AMERICAN LEGION, ON H.R. 15626 (A BILL TO AMEND THE SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950 TO AUTHORIZE THE FEDERAL GOVERNMENT TO DENY EMPLOYMENT IN DEFENSE FACILITIES TO CERTAIN INDIVIDUALS, TO PROTECT CLASSIFIED INFORMATION RELEASED TO UNITED STATES INDUSTRY)

Mr. Chairman and Members of the Committee, The American Legion appreciates the opportunity to testify in support of H.R. 15626, a bill which would authorize the Federal Government to deny employment to certain subversive individuals in defense facilities of the United States. Certain provisions of the Subversive Activities Control Act of 1950 which made it unlawful for members of Communist-action organizations to engage in employment in a defense industry were nullified by the Supreme Court in *United States* v. *Robel*, decided December 11, 1967. The Supreme Court held that those provisions were void for "overbreadth," unconstitutionally abridging the "right of association," protected by the first amendment to the Constitution.

In order to protect the internal security of the United States, the Congress must adopt legislation which will meet the Supreme Court's objection or take the drastic position of preempting the authority of the United States Supreme Court to rule on any legislation related to the national security. Today, we recommend enactment of new law to meet the Court's fiat on overbreadth, its references to limitations on executive or legislative authority and, specifically, its invalidation of United States Coast Guard regulations on permits to merchant seamen. H.R. 15626 will accomplish these objectives.

Personnel engaged in security work find it most difficult to protect the United States because of the infiltration and subversive tactics of world communism. It is especially discouraging to law enforcement officials and others charged with preserving our internal security to see their efforts vitiated by Court decisions of this nature. Reasonable men find the burden placed on them so intolerable they are tempted to abandon the battle against subversion and simply go through the motions because their efforts are stymied repeatedly by Court decisions which have overstretched reasonable bounds in an effort to make the individual's rights the "sacred cow" of liberal interpretation at the expense of the Nation as a whole. The American Legion cannot agree with certain decisions of the Court, such as this one, which allows Communists to remain employed in defense plants. Nowhere in these decisions do we find an expression of confidence, faith, and trust in public and private officials to evaluate the evidence and make findings based thereon which are fair, equitable, and consonant with the national interest.

Mr. Chairman, who and what is a passive Communist? What man or woman joins the Communist Party for the sake of joining? Who joins the Communist Party and then states he disagrees with the aims and objectives of the Communist Party? The Court majority has proclaimed that guilt by association is an infringement of the first amendment and proceeds to protect the rights of the so-called passive Communist, the commie who joins the party, but perhaps disagrees with its aims and purposes.

Mr. Chairman, we commend you and the committee for providing specific authority for the President to institute a personnel screening program to secure the objectives of the Magnuson Act even though we believe sound reason would

dictate the President already has the inherent power to effectuate a program to accomplish this purpose. We appreciate, too, your setting of specific standards to meet the objections relating to associational activities and are particularly pleased to note the provision regulating the jurisdiction of the Courts in certain proceedings. Your sincere effort to establish procedures to authorize specific investigation, hearing, and review procedures; cross-examination and confrontation of witnesses; and the issuance of compulsory process, all attest to your good faith in providing the constitutional safeguards for all persons coming within the orbit of this legislation.

The American Legion has, since its founding, fought communism and what it stands for and we find it difficult to accept the tortuous reasoning which allows enemies of this Nation to be employed in defense industries. It follows, therefore, that your remedial action should be approved by the Congress of the United States if we are to protect our beloved country.

Another important section of this bill covers the refusal to testify upon the grounds of self-incrimination in any authorized inquiry relating to subversive activities conducted by any congressional committee, Federal court, Federal grand jury, or any other duly authorized Federal agency, as to any question relative to subversive activities of the individual involved or others. We believe Congress has not only the right but the duty to enact legislation to safeguard defense facilities from acts of espionage and sabotage and to set up personnel and industrial security clearance programs to protect classified information as well as the actual facilities, whether it be vessels, harbors, or docks.

Representing the members of The American Legion, numbering 2,600,000, and 1,000,000 members of the American Legion Auxiliary, I urge this committee to report favorably on H.R. 15626. If ever there was a time in our Nation's history when we should be concerned about communism, it is now. We have seen this ideology spread throughout the world and we would be "sad sacks" to stand idly by while judicial fiat allows Communists to be employed in our defense industry. I urge you to give the internal security of our Nation top priority, and pass this bill on to the floor of the House for consideration.

Thank you for allowing me to appear here today.

The CHAIRMAN. Our last witness this morning is Mr. Speiser, with the American Civil Liberties Union.

Mr. Speiser, you may come forward, sir.

If you wish, you can file your statement at this point and speak from it.

STATEMENT OF LAWRENCE SPEISER, DIRECTOR, WASHINGTON, D.C., OFFICE OF AMERICAN CIVIL LIBERTIES UNION

Mr. SPEISER. Very well, Mr. Chairman. I would like my statement included in the record in its entirety.

I will not read it. In order not to keep members of the committee in suspense, I will state at the outset that we are opposed to the enactment of H.R. 15626, H.R. 15018, and the related measures, which are attempts to overturn the Supreme Court's decisions in *United States* v. *Robel*, and *Schneider* v. *Smith*.

We go into the constitutional arguments in some detail in our testimony. I am quite willing to answer questions of the committee, based on the submission that we have made.

(Mr. Speiser's prepared statement follows:)

STATEMENT OF LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION, ON H.R. 15626, H.R. 15018, AND RELATED MEASURES, APRIL 30, 1968

I am Lawrence Speiser, director of the Washington, D.C., office of the American Civil Liberties Union. For almost a half century the ACLU has existed with the sole purpose of protecting and extending the liberties and rights contained in the Bill of Rights of the United States Constitution. Our continued

dedication to that purpose demands that we strongly oppose H.R. 15626, H.R. 15018 and similar measures being considered by this Committee today.

Each of these measures has as its avowed purpose authorizing the Federal Government to deny employment in defense facilities to certain individuals. More candidly, however, it might be said that each has as its purpose an attempt to overturn the recent Supreme Court decision in *United States* v. *Robel*, 389 U.S. 258 (1967), holding that mere membership in the Communist Party is an insufficient basis to bar an individual from work in a defense related industry. Indeed, most of these measures would go beyond the employment restriction held unconstitutional in *Robel*. They attempt not only to bar an individual from work in such industry on the basis of membership in the Communist Party, but also to extend that bar to participants in many other activities, organizations or associations, none of which are in themselves unlawful.

We fully recognize the seriousness and importance of the Government's interest in national security. Likewise, we are fully aware of the Government's ability, under the "war power" of Article I of the Constitution, to enact legislation to protect and promote that interest. Nevertheless, that interest must be defined and that power exercised at all times within the bounds of the specific guarantees of Bill of Rights. In the recent words of the Supreme Court,

". . . the phrase 'war power' cannot be invoked as a talismanic incantation to support any exercise of congressional power which can be brought within its ambit . . . [T]his concept of 'national defense' cannot be deemed an end in itself, justifying any exercise of legislative power designed to promote such a goal. Implicit in the term 'national defense' is the notion of defending those values and ideals which set this Nation apart. . . . It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties . . . which makes the defense of the Nation worthwhile." *United States* v. *Robel*, *supra*.

It is because the measures before this committee today would, in our view, subvert "those liberties . . . which make the defense of this nation worthwhile" that the ACLU urges their complete and unequivocal rejection.

The provisions of these bills often overlap, and our objections to them often apply to provisions in several of the bills. Therefore, I will discuss first, H.R. 15626, the broadest of the bills.

I. H.R. 15626[1]

A. COMMUNISTS BARRED FROM DEFENSE FACILITIES

This Bill has three main provisions. The first of these would reinsert in the Internal Security Act of 1950, the specific provision found unconstitutional in *Robel*. Section 5(a)(1)(D) of the Internal Security Act as amended, had provided that "it shall be unlawful" for a member of a Communist-action organization, "to engage in any employment in any defense facility." The *Robel* decision struck down this provision as "an unconstitutional abridgement of the right of association protected by the First Amendment."

H.R. 15626 attempts to evade that decision by adding to the original proscription the clause "with knowledge or notice of its designation as a defense facility." This addition utterly fails to revalidate the original provision for a number of reasons. Chief among these is the fact that the element of "knowledge" found lacking in the original provision was not knowledge of the fact that a facility had been designated as a defense facility for purposes of the Internal Security Act.

In *Robel*, the Court specifically called attention to *Aptheker* v. *Secretary of State*, 378 U.S. 500, in which § 6 of the Subversive Activities Control Act, 16 U.S.C. § 2385 was held unconstitutional. That section provided that "when a Communist organization is registered or under a final order to register, it shall be unlawful for any member thereof *with knowledge or notice thereof* to apply for a passport." [Emphasis added.] *United States* v. *Robel*, *supra*.

Section (2)(c) of H.R. 15626 would rewrite § 5(a)(1)(D) of the Internal Security Act so that it is exactly analogous to the provision found unconstitutional in *Aptheker*. This is hardly a way to save a provision already held unconstitutional for other reasons.

While knowledge of a facility's designation under § 5(a)(1)(D) would undoubtedly be required by due process, as a necessary element of the offense for

[1] H.R. 15649 and H.R. 16613 are identical bills.

violation of the section, it is, in itself, not sufficient to salvage the section. The "knowledge" which, among other things, the section failed to require, is knowledge of the Communist-action group's unlawful aims and purposes. The Court stated, in *Robel*, with regard to § 5 (a) (1) (D), that:

"It is precisely because that statute sweeps indiscriminately across all types of associations with Communist-action groups, without regard to the quality and degree of membership, that it runs afoul of the First Amendment."

In this respect, the proposed new provision of H.R. 15626 retains all the constitutional defects of the one which was stricken.

We are convinced that no such sweeping attempt to bar members of Communist organizations, merely on the basis of such membership, from any and all employment in defense facilities, can withstand constitutional scrutiny. The Supreme Court requires that congressional enactments which impose disabilities upon individuals for membership in organizations which advocate unpopular ideas must contain each of four elements: (1) the organization must have goals which are illegal and which Congress can constitutionally proscribe; (2) the individual member of the organization must *know* of these illegal goals; (3) the member must have the *specific intent* to further or accomplish such goals; and (4) the individual must be "*active*" and "not merely 'a nominal, passive, inactive or purely technical' member." See, e.g., *Scales* v. *United States*, 367 U.S. 203 (1961). As the Court has stated:

"Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. Laws . . . which are not restricted in scope to those who join with the 'specific intent' to further illegal action impose, in effect, a conclusive presumption that the member shares the unlawful aims of the organization. . . . [Such laws rest] on the doctrine of 'guilt by association' which has no place here." *Elfbrandt* v. *Russell*, 384 U.S. 11, 17 (1966).

Section (2) (c) of H.R. 15626 which would impose a substantial disability on individuals for membership in such organizations fails to comply with the above stated tests of constitutionality. It fails, for example, to require that the individual member have the specific intent to further the unlawful purposes or goals of the organization, or that he has participated in unlawful activities of the organization. The member in question, may know of the organization's illegal goals, but may, himself, have had no specific intent to further these goals in any way. In fact, the member may actually disapprove of the organization's goals, yet continue his membership in the hope that he might change the ideological direction of the organization. While such a person would constitute the very opposite of a "clear and present danger" to any national interest, he might nevertheless be subject to criminal penalties.

Clearly, this kind of provision suffers from "the fatal defect of overbreadth . . ." *United States* v. *Robel*. Because it is "irrelevant that an individual may be a passive or inactive member of a designated organization, that he may be unaware of the organization's unlawful aims . . . that he may disagree with those unlawful aims," or that he may "occupy a nonsensitive position in a defense facility," (*United States* v. *Robel*, 36 U.S.L.W. at 4062; see also *Cole* v. *Young*, 351 U.S. 536, 546 (1955). it lacks that "[p]recision of regulation [which] must be the touchstone in an area so closely touching our most precious freedoms," *NAACP* v. *Button*, 371 U.S. 415, 438 (1963); see *Aptheker* v. *Secretary of State*, 378 U.S. 500, 512–13 (1964); *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960). It draws within its scope an overly broad range of associations, indiscriminately penalizing membership which can be constitutionally punished (see *Scales* v. *United States*, 367 U.S. 203 (1961)), and membership which cannot (see *Elfbrandt* v. *Russell*, 384 U.S. 11 (1966)).

B. DENIAL OF EMPLOYMENT IN DEFENSE FACILITIES

The second major provision of H.R. 15626 continues along the path blazed by the first provision, wreaking further devastation upon fundamental freedoms. Section (4) of H.R. 15626 would add a new section to the Internal Security Act, authorizing the denial of employment in, or access to, any defense facility to any person on the "basis of findings that such person's employment in or access to such facility is not clearly consistent with the national defense or security interests." Guidelines, as to how to arrive at such findings, are provided. The de-

tails of these will be discussed later. At this point it is sufficient to note that individual opinions, associations and organizational memberships are all factors to be considered in those findings, and, as a result, the potential reach of such a provision is unbounded. This is compounded by the lack of any limitation on the kinds of positions in a defense facility to which the ban extends.

While no constitutional provision specifically speaks of the "right" to employment, it is clear that individuals are afforded protection in their jobs against arbitrary governmental interference. In this regard, the Supreme Court has said,

"the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment. . . ." *Greene* v. *McElroy*, 360 U.S. 474.

Thus, the absence of criminal penalties in the proposed new provision in no way makes it more tolerable. The possibility of any penalty—whether criminal or not—undeniably inhibits individuals from engaging in conduct which they fear may result in its application to them. Moreover, it is indisputable that the loss of employment is indeed a severe and substantial penalty, no less to be feared than a fine or even imprisonment. In *Dombrowski* v. *Pfister*, 380 U.S. 479 (1965) the Court spoke of the "chilling effect" upon the exercise of first amendment rights which results from the imponderables and contingencies involved in statutes regulating expression to which criminal sanctions are attached. Surely, that same cold chill can be felt here where expression and association are indirectly regulated and the sanction of loss of employment is attached.

Turning, now, to some of the specific provisions of the proposed new section of the Internal Security Act, it is striking to note initially that it authorizes:

"reasonable inquiries directed to an individual regarding his membership in, or affiliation with, any Communist, Marxist, Fascist, totalitarian, or subversive organization, *and such other associations, habits, and activities, past or present*, which are relevant or material to a determination whether he should be denied employment in or access to any defense facility. . . ." [Emphasis added].

In other words inquiries may be made regarding anything or everything in an individual's life, past or present, the only limit being some government officer's own notions of relevance. It is manifest, that this does violence to even the most limited concept of the right to privacy, which, incidentally, is clearly afforded protection from governmental interference (see, e.g., *Griswold* v. *Connecticut*, 381 U.S. 479).

Some guidance as to what associations, habits and activities, past or present, may be the subject of these so-called "reasonable inquiries" is provided. An examination of these, however, leads one to question whether the threat to constitutional freedoms might not be less if we merely hoped for good judgment on the part of the official involved without suggesting and thereby sanctioning inquiry into the categories which this Bill lists. In all seventeen categories are listed, and, lest individual ingenuity on the part of executive branch officials be circumscribed the list is specifically not to be deemed exclusive. The incredibly unbounded area in which a "chilling effect" upon the exercise of first amendment freedoms would be felt if this legislation were to be adopted is clearly evidenced by an examination of only a few of these suggested categories.

First, there is the category of "(1) membership in, or affiliation with, and whether such individual is serving as an agent or employee of . . ." a number of organizations then described. Included, are familiar organizations such as one determined by the SACB to be a "communist organization." However, some interesting new types of organizations are also included. For example, there is,

"(C) any organization which the President . . . finds, or has probable cause to believe, is . . . (ii) an organization which has been organized or utilized for the purpose of giving aid or assistance to any foreign government, group, or association engaged in armed conflict with the United States . . . ."

Apparently this is an attempt to include organizations protesting the war in Vietnam. Note that under its broad language, however, the American Red Cross would probably qualify as such an organization. Similarly included is,

"(iv) an organization which advocates, encourages, counsels, aids or abets violation of any Federal law related to the internal security of the United States or its defense against foreign aggression. . . ."

Like the previous category, this one would seem also to have a specific group in mind. This is an apparent attempt to include groups urging resistance to the draft. Note that its reach is broad enough to include the 4,000 college and university professors who last week signed an advertisement in the *N.Y. Times* expressing their support of Dr. Spock, Reverend Coffin and the other defendants now being tried for conspiracy to violate the Selective Service law.

Whatever one may think of the legality or illegality of the objects of organizations of this kind, and the consequent ability of the Government to regulate their activities, we would suggest that fundamental fairness requires a full airing and individual consideration of those issues, before membership in such organization is made the basis for a finding of fact which can result in a substantial disability.

Other suggested categories for official inquiry, which at best offer only the most tenuous basis for a finding that an individual's employment in a defense facility is inconsistent with the national security include,

"(5) establishing or continuing sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, revolutionist, members of an organization referred to in paragraph (1) of this subsection [2] . . . under circumstances and of such a nature as to raise a reasonable doubt that the association is . . . clearly consistent with the national defense or security interests;"

The inhibiting effect on freedom of associations which could result from utilizing membership in groups which come within this kind of category as a basis for denial of employment is obvious. Not only would the heavy hand of the government fall upon those counseling draft resistance, for example, but those in "sympathetic" association with them, whatever that may be.

Another particularly objectionable category is,

"(9) refusal to testify, upon the ground of self-incrimination, in any authorized inquiry . . . conducted by any congressional committee, Federal court, Federal grand jury, or any other duly authorized Federal agency, as to any question relating to subversive activities of the individual involved or others;"

To impose an employment disability on an individual on the basis of such refusal is clearly unconstitutional. To do so would be to in effect penalize the exercise of one's fifth amendment constitutional privilege against self-incrimination. This Congress may not do. See *Garrity* v. *New Jersey*, 385 U.S. 493 (1967) and *Slochower* v. *Board of Higher Education*, 350 U.S. 551.

Finally, there is the category of,

"(16) any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion;"

Across the board inquiry into the above matters is totally unjustified here. While possibly permissible with regard to an individual who applies for a security clearance for access to classified material, or an individual in a particularly sensitive position, it must be remembered that we are dealing here with any employee of a defense facility and that the definition of such facility is a very broad one. Such provision thus evidences a total disregard for the right of privacy. See, e.g., *United States* v. *Rubia*, 110 F.2d 92; *Schmidt* v. *United States*, 177 F.2d 450. See also, *Griswold* v. *Connecticut*, 381 U.S. 479.

After authorizing these wide-ranging inquiries, in complete disregard of the constitutionally protected freedom of association and right to privacy, the proposed new section of the Internal Security Act belatedly manifests an awareness, although, regrettably, no understanding, of constitutional limits on interference with such freedoms. Section (f) thereof attempts to bring the section's impact on first amendment freedoms within the range of permissible restrictions by delineating what shall be considered "in determining the significance to be given for the purposes of this section to the organizational membership or associations" of an individual. Included among the factors to be considered are the persons knowledge of the nature and purposes of the organization, his commitment to those purposes, his intent to advance those purposes, and so forth. These are, of course, elements which, as I mentioned earlier, the Supreme Court requires in congressional enactments which impose disabilities upon individuals for mem-

[2] Those organizations are the ones discussed in the previous paragraph, which include, among others, Vietnam dissenters and those urging resistance to the draft.

bership in organizations which advocate unpopular ideas. However, these elements are insufficient to legitimize this enactment, for the very crucial first element—that the organization must have goals which are illegal and which Congress can constitutionally proscribe—is not present here.

An examination of the cases which have involved enactments placing disabilities on members of organizations advocating unpopular ideas, reveals that this is only permissible where supported by substantial findings that the aims or purposes of such organization and of ideas advocated thereby are themselves unlawful and pose a clear and present danger to an overriding interest of the Government. See, e.g., *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1 (1961); and, *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449 (1958). In the *Communist Party* case, where the Court upheld the registration provisions of the Subversive Activities Control Act of 1950, there were substantial legislative findings regarding the nature of the threat posed by the "Communist movement". Reference was repeatedly made to those findings, and to whether registration was a proper means to deal with the threat posed. The Court specifically stated,

"In light of its legislative findings . . . we cannot say that the danger is chimerical, or that the registration requirement of § 7 is an ill adjusted means of dealing with it."

No such findings have been or most likely could be made with regard to the organizations and associations designated in this legislation. Moreover, the findings in that case were legislative ones. Under this Bill, note that the Director the Federal Bureau of Investigation would be empowered to make such designations—a power that the present Director of the FBI has long protested the Bureau does not have nor should have. Also each Federal agency, whether it be H.E.W. or the Small Business Administration, would be empowered to determine which organizations are "totalitarian, Fascist, Communist, or subversive." There is no provision for hearing or any kind of procedure before any designation is made. See *Joint Anti-Fascist Committee* v. *McGrath*, 341 U.S. 123.

It is far from clear that an individual's membership in an organization counseling violation of a Federal law, such as the Selective Service Act, makes it likely that his employment in a defense facility is inconsistent with the national interest. More importantly, it is far from clear that many of the activities which this legislation would make suspect are unlawful or could be constitutionally proscribed.

Clearly the new section of the Internal Security Act proposed by section (4) of H.R. 15626 suffers from the constitutional vices of vagueness and overbreadth. It "sweep indiscriminately" across association with all types of groups. The description of the groups included is so broad and open ended that individuals affected cannot forecast whether the statute will apply to them. Individuals who sincerely believe their behavior is innocent may be punished; others may be deterred from lawful activities by the fear that such activity may result in a substantial disability. In addition, as the vagueness increases, so does the discretion given to officials who enforce the act. It becomes easy and tempting for authorities to "punish" conduct which offends them.

These vices are compounded by the broad category of facilities which according to section (3) of H.R. 15626 may be designated as defense facilities and the absence of any limitation of the ban to "sensitive" positions. For example, a university in which research is being conducted on a specific disease or public health problem might be "engaged in laboratory research significant to the national defense." The Secretary of Defense could reasonably find that the public health problem or disease affected significant numbers of military personnel so that disruption of that university "by an act of sabotage, espionage or other act of subversion would directly impair the military effectiveness of the United States." Accordingly the university could be designated as a defense facility. As there is no requirement in the Bill that only those engaged in work directly related to the threat to our military effectiveness be barred from employment in the facility any employee of the university who had been a member of the organizations described in § (4), or had associations of the kind described therein—from porter to professor to the President—might thus be barred on the pretext of a threat to the national security.

Before turning to the third major provision of H.R. 15626, there are three other provisions in section (4) which should be briefly touched upon, because of their particularly improper nature. The first of these is § (h) which provides:

"In the course of any inquiry, investigation, proceeding, or hearing to determine the fitness and qualifications of any individual for employment in or access to any defense facility or for access to classified information . . . the willful refusal of any individual to answer relevant inquiries required of him . . . may be considered sufficient, in the absence of satisfactory explanation . . . to justify denying, suspending, or revoking any such employment or access authorization."

This provision is patently unconstitutional in that it forces an employee to choose "between self-incrimination or job forfeiture . . ." *Garrity* v. *New Jersey*, 385 U.S. 493, 496 (1967). The Government cannot "use the threat of discharge to secure incriminatory evidence against an employee." *Id.* at 499. See also, *Spevack* v. *Klein*, 385 U.S. 511 (1967). If the price for obtaining the protection of the self-incrimination clause of the fifth amendment is the loss of one's job and livelihood, then that invaluable right is effectively destroyed.

Secondly, subsection (k) of § (4) attempts to afford an individual procedural due process by allowing him a hearing, at which he may be represented by counsel, and an opportunity to inspect documentary evidence or cross-examine witnesses providing adverse information. These rights are, as a practical matter, severely limited by the discretion of the government to withhold information in the interest of national security or conceal an informant who cannot "for reasons determined . . . to be good and sufficient" be identified or cross-examined. This is contrary to the spirit of our constitutional system which in the sixth amendment recognized the right to confront one's accusers and to cross-examine witnesses against one. *Greene* v. *McElroy*, 360 U.S. 474; *Barber* v. *Page*, 36 L.W. 4329 (April, 1968). While this is not a criminal case in which the sixth amendment guarantee would be mandatory, the implications of this proceeding are sufficiently analogous to suggest that the same sixth amendment guarantees should here apply.

Finally, subsection (n) of § (4) deals with the issuance of process to compel witnesses to appear and testify or produce evidence in proceedings authorized by the section. Therein it provides that—

"No person, on the ground or for the reasons that testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, shall be excused from testifying or producing documentary evidence, but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he, under compulsion as herein provided, may testify, or produce evidence. . . ."

This provision grants immunity to witnesses in order to facilitate the gathering of evidence. In doing so, it undermines the fifth amendment privilege against self-incrimination. The constitutionality of this kind of legislative grant of immunity is not free from doubt. Even if it would be constitutionally permissible, however, we question its wisdom and propriety.

As Mr. Justice Frankfurter said in the Court's opinion in *Ullman* v. *United States*, 350 U.S. 422:

"This command of the Fifth Amendment ('nor shall any person . . . be compelled in any criminal case to be a witness against himself . . .') registers an important advance in the development of our liberty—'one of the great landmarks in man's struggle to make himself civilized.' Time has not shown that protection from the evils against which the safeguard was directed is needless or unwarranted." At 426.

The privilege against self-incrimination should also include protection against self-degradation. Our democratic system is based on the concept of fairness and decent treatment of the individual, and the full power of Government should not be brought to bear to force a person to condemn himself by his own words. Slowly but surely the privilege against self-incrimination is being whittled away by legislative action. In such disparite areas, for example, as narcotics offenses (18 U.S.C. § 1406) and hearings before the Federal Deposit Insurance Corporation (12 U.S.C. § 1820), among many others, Congress has provided for grants of immunity in derogation of the privilege. Now again it is proposed further to extend the cloak of immunity in the name of national security. This proposal, like the rest of H.R. 15626 is ill-advised.

C. SECURITY OF VESSELS AND WATERFRONT FACILITIES

Finally, §(6) of H.R. 15626, its third major provision, would amend 50 U.S.C. 191, to deny any person access to vessels, harbors, ports and waterfront facilities under the same procedures and on the same bases as §(4) provides for denying access to defense facilities. This, apparently is an attempt to overturn the recent Supreme Court decision in *Schneider* v. *Smith*, 36 U.S. L.W. 4131 (Jan. 16, 1968). In that case, the U.S. Supreme Court held that the Magnuson Act, 50 U.S.C. §191, did not give the President express authority to set up a screening program for personnel on merchant vessels of the United States. The Court also held that the Government could not constitutionally probe the reading habits, political philosophy, beliefs and attitudes on social and economic issues of prospective seamen on our merchant vessels.

As this provision merely adopts all the criteria and procedures previously discussed with regard to defense facilities in general, it also adopts the defects of those and in doing so is itself constitutionally unsound. Moreover, since it will likely permit the kind of probe of "habits" and "associations" which were conducted under the Magnuson Act before the *Schneider* case, it, too, must fail.

II. Other Measures

A. H.R. 15018[3]

H.R. 15018, like section (4) of H.R. 15626, proposes a new section to the Internal Security Act of 1950. It would authorize the President to institute measures to bar from employment in a defense facility *any* person "as to whom there is reasonable grounds to believe he is *disposed* and has the opportunity by reason of his employment to engage in sabotage, espionage, or other subversive acts against his employer." [Emphasis added.] Thus it would authorize the placing of a disability on an individual for his "disposition" to commit an unlawful act, rather than for any actual conduct. This is at least as tenuous a standard as that in H.R. 15626, which would place the disability on a person "on the basis of findings that such person's employment . . . is not consistent with the national defense." Also, like H.R. 15626, H.R. 15018 then authorizes inquiries into affiliations, memberships, beliefs or activities, past or present, which are relevant to a determination whether there are reasonable grounds to believe he will engage in the unlawful acts which the Government seeks to prevent. Refusal to answer an inquiry is sufficient grounds for barring the employee.

This Bill suffers not only from all the defects evident in H.R. 15626, but adds to the list some serious defects of its own. At least in H.R. 15626 an attempt is made to provide some guidelines for making the crucial determination. At least in H.R. 15626 there is some recognition of the necessity of considering in this context an organization's illegal goals, the individuals knowledge and adherence thereto, and whether or not his membership can provide a basis for an adverse finding. Under H.R. 15018 the administrator's discretion is unlimited. Accordingly, H.R. 15018 suffers from the "fatal defect of overbreadth"; it "sweeps indiscriminately across all types of associations . . . without regard to the quality and degree of membership," and for this reason alone it clearly "runs afoul of the First Amendment", *United States* v. *Robel*. Compounding this, its entire lack of guidelines for determining when the disability should be placed upon an individual, results in an unlawful delegation of legislative power. Thus, it also runs afoul of Article I of the Constitution. See *Panama Refining Company* v. *Ryan*, 293 U.S. 388.

B. SECTIONS 203 AND 204 OF H.R. 15828

1. Section 203—Findings of Fact

Section 203 of H.R. 15828 would add the following new provision to the Internal Security Act of 1950:

"The Congress finds and declares that because of the totalitarian nature of the world Communist conspiracy, the fact that a major objective of such conspiracy is the overthrow of the Government of the United States by force and violence, the obligation imposed in Communist discipline upon members of Communist organizations to take advantage of opportunities to act in further-

[3] H.R. 15092, H.R. 15229, H.R. 15272 are identical.

ance of the aforesaid objective, and the *likelihood* that an individual who willfully and knowingly chooses to be a member of a Communist organization (and thereby subject to Communist discipline) will act in furtherance of the aforesaid objective if given opportunity to do so, it is *per se a clear and present danger to the national security* to have employed in a defense facility an individual who, after the expiration of ninety days following an order of the Subversive Activities Control Board designating an organization as a Communist-action organization, and with knowledge or notice of such order, has elected to remain or to become a member of such organization." [Emphasis added.]

As is H.R. 15626, this section together with § 204 of H.R. 15828 is an attempt to overturn the recent Supreme Court decision in *United States* v. *Robel*. For numerous reasons, this section is constitutionally defective.

First, if applied, it would clearly infringe upon the freedoms of speech and expression protected by the first amendment of the United States Constitution. The Supreme Court has long held that Congress cannot curtail the full and free exercise of speech or advocacy of ideas unless it clearly demonstrates that the speech or advocacy of ideas in question presents a "clear and present danger" to some institution which Congress may legitimately protect:

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. *Schenck* v. *United States*, 249 U.S. 47, 52 (1919).

Section 203 declares it *per se* a clear and present danger to be a member of a Communist-action organization and at the same time be employed in a defense facility. This is an attempt by Congress by fiat to legislate into existence "a clear and present danger." Facts cannot be legislated by congressional whim.

In discussing H.R. 15626, we pointed out that the Supreme Court requires that congressional enactments which impose disabilities upon individuals for membership in organizations which advocate unpopular ideas must contain each of four elements: (1) the organization must have goals which are illegal and which Congress can constitutionally proscribe; (2) the individual member of the organization must *know* of these illegal goals; (3) the member must have the *specific intent* to further or accomplish such goals; and (4) the individual must be "*active*" and "not merely 'a nominal, passive, inactive or purely technical' member." See, e.g., *Scales* v. *United States*, 367 U.S. 203 (1961).

Section 203 fails to comply with these tests of constitutionality. It sets up a conclusive presumption that persons who knowingly and willfully become members of Communist organizations, and who remain members with knowledge or notice of an order of the Subversive Activities Control Board designating such an organization to be a "Communist-action organization", "*will act*" in furtherance of illegal goals which might threaten the government of the United States. It fails also to require that the individual member must have the specific intent to further the unlawful purposes or goals of the organization, or that he has participated in unlawful activities of the organization.

Even though the member does specifically intend to further the unlawful goals, if he does not actually "participate in its unlawful *activities*", *Elfbrandt* v. *Russell*, 384 U.S. at 17 (emphasis added), he cannot be punished for his mere mental state of mind. A congressional declaration of the "*likelihood*" that a member of a certain organization will act to further certain unlawful objectives is not enough. Inactive, passive, technical or merely nominal members, such as secretaries, janitors, or even social chairmen, who are in some sense "active" in the organization, do not in the slightest constitute a clear and present danger to the nation's security.

Section 203 of the 1968 amendments, if enforced, would also violate the right of association which is protected (see *United States* v. *Robel*, 389 U.S. 258 (1967)) by the provisions of the first amendment. A statute which "sweeps indiscriminately across all types of association with Communist-action groups, without regard to the quality and degree of membership . . . runs afoul of the First Amendment" and suffers from "the fatal defect of overbreadth . . . ." *Id.* at 258. Because § 203 makes it "irrelevant . . . that an individual may be a passive or inactive member of a designated organization, that he may be unaware of the organization's unlawful aims . . . that he may disagree with those unlawful aims," or that he may "occupy a nonsensitive position in a defense facility," see *United States* v. *Robel*, 389 U.S. 258; see also *Cole* v. *Young*, 351 U.S. 536, 546 (1955), it lacks that "[p]recision of regulation [which] must be the touchstone

in an area so closely touching our most precious freedoms." *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 438 (1963); see *Aptheker* v. *Secretary of State*, 378 U.S. 500, 512–13 (1964); *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960). Section 203 draws within its scope an overly broad range of associations, indiscriminately penalizing membership which can be constitutionally punished (see *Scales* v. *United States*, 367 U.S. 203 (1961)), and membership which cannot (see *Elfbrandt* v. *Russell*, 384 U.S. 11 (1966)). The Government cannot, even in the name of national defense, abuse so indiscriminately the right of individuals to become members of groups which espouse unpopular ideals or causes.

Finally, § 203 constitutes a clear violation of Article I, Section 9, cl. 3 of the United States Constitution which provides that "(n)o Bill of Attainder . . . shall be passed (by the Congress)." A Bill of Attainder is a legislative act, such as proposed § 203, which imposes disabilities upon named individuals or easily ascertainable groups without a judicial trial. *United States* v. *Brown*, 381 U.S. 437 (1965). By stating that members of Communist-action organizations who work in defense facilities present "*per se* a clear and present danger to the national security", § 203 creates a presumption of guilt which the individual affected cannot rebut. Such an individual is forever prevented from proving to a jury of peers that he did not have the requisite specific intent to further the organization's illegal goals, and performed no act which would in any way further those goals. Juries, not legislatures, must determine guilt and impose punishments. By punishing innocent and guilty association alike, § 203 constitutes a Bill of Attainder.

2. Section 204(c)—Communists Banned From Defense Facilities

Section 5(a) of the Internal Security Act of 1950, as amended January 2, 1968, (P.L. 90–237) reads as follows:

"(a) When there is in effect a final order of the Board determining any organization to be a Communist-action organization or a Communist-front organization, it shall be unlawful—

(1) For any member of such organization, with knowledge or notice of such final order of the Board—

(A) in seeking, accepting, or holding any nonelective office or employment under the United States, to conceal or fail to disclose the fact that he is a member of such organization; or

(B) to hold any nonelective office or employment under the United States; or

(C) in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such organization; or

(D) if such organization is a Communist-action organization, to engage in any employment in any defense facility; or

(E) to hold office or employment with any labor organization, as that term is defined in section 2(5) of the National Labor Relations Act, as amended, or to represent any employer in any matter or proceeding arising or pending under that Act.

(2) For any officer or employee of the United States or of any defense facility, with knowledge or notice of such final order of the Board—

(A) to contribute funds or services to such organization; or

(B) to advise, counsel or urge any person, with knowledge or notice that such person is a member of such organization, to perform, or to omit to perform, any act if such act or omission would constitute a violation of any provision of paragraph (1) of this subsection."

When, on December 11, 1967, the United States Supreme Court struck down § 5(a)(1)(D), above, as an "unconstitutional abridgement of the right of association protected by the First Amendment," *United States* v. *Robel*, the constitutionality of subsections 5(a)(1)(C), 5(a)(1)(E) and 5(a)(2) was left in serious doubt.

Section 204(e) of H.R. 15828 is yet another attempt to evade the impact of the *Robel* decision and reinsert into the Internal Security Act of 1950 a provision similar to the one recently declared unconstitutional. This subterfuge, too, must fail. Section 204(e) is constitutionally defective, not merely under the holding of *Robel* itself, but under other numerous and well-established constitutional doctrines as well.

Section 204(e) deletes from § 5(a) of the Internal Security Act all reference to "defense facilities" and inserts a new provision subsection (b), to deal with simultaneous membership in a Communist organization and employment in a defense facility. The new subsection (b) reads as follows:

"(b)(1) It shall be unlawful—

(A) for any member of a Communist organization, knowing or having reasonable grounds for believing such organization to be a Communist organization, in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such organization; or

(B) for any individual who is an active member of an organization, knowing such organization to be an organization as to which there is in effect a final order of the Subversive Activities Control Board by which such organization has been determined to be a Communist-action organization, and having subscribed or assented to any unlawful objective of such organization, to engage in any employment which may affect the national security of the United States in a facility which is designated as a defense facility (as defined by paragraph (7) of section 3 of the Subversive Activities Control Act of 1950) under a currently valid designation by the Secretary of Defense, with knowledge or with notice of such designation; or

(C) for any officer or employee of a defense facility (i) to contribute funds or services to a Communist organization, knowing or having reasonable grounds for believing such organization to be a Communist organization, or (ii) to advise, counsel, or urge any person, knowing or having reasonable grounds for believing that such person is a member of a Communist organization, to perform, or to omit to perform, any act if such act or omission would constitute a violation of paragraph (A) or (B) of subdivision (1) of this subsection."

Proposed subsection (b)(1)(A) would make it unlawful for members of Communist organizations to fail to disclose their membership in such organizations when seeking, accepting, or holding employment in a defense facility. Proposed subsection (b)(1)(C), would make it unlawful for any officer or employee of a defense facility to contribute funds or services to a Communist organization, or to advise, counsel or urge any member of a Communist organization to perform, or omit to perform, any act which would violate any provision of proposed subsection (b)(1).

According to proposed subsections (b)(1)(A) and (b)(1)(C), it is no longer necessary, for the section to become operative, that members of Communist organizations have "knowledge or (actual) notice" of a "final order of the Board" determining the organization to be a Communist-action or Communist-front organization; instead, they must *know* or have *reasonable grounds for believing* such organization to be "a Communist organization".

The proposed subsections vary from their counterparts in two respects. First, a final order of the Board is no longer necessary; individuals must determine *on their own* whether the organization in question is "Communist". Second, knowledge or actual belief that the organization in question is "subversive" is no longer required; instead, knowledge or *grounds for belief* that the organization in question is "subversive" is sufficient. The proposed amendments subject the "innocent" or passive member of a Communist organization to an even greater threat of unconstitutional punishment. The member may not know the organization is Communist; he may not even *believe* the organization is Communist. But if the Subversive Activities Control Board determines that the member had sufficient facts at his command himself to conclude the organization was Communist, even though in fact he reached no such conclusion, he will be subjected to the penalties of the 1950 Subversive Activities Control Act. Indeed, the Board need no longer even provide the member with the *warning* that *it* has determined the organization in question to be "Communist".

Subsections (a)(1)(C) and (a)(2) of § 5, even as they presently stand, are unconstitutional. The proposed amendments would subject the entire section to even greater constitutional doubt.

First, the compulsory disclosure of the fact of one's membership may in many cases infringe upon the constitutionally protected right of association. See *N.A.A.C.P.* v. *State of Alabama*, 357 U.S. 449 (1958); *Bates* v. *City of Little Rock*, 361 U.S. 516 (1960); *Shelton* v. *Tucker*, 364 U.S. 479 (1960). Not

only is the fear of public exposure and ridicule substantial, but the pressure upon an individual to avoid even the remote possibility of incurring substantial criminal penalties is also constant and heavy.

Second, the provisions in question suffer from the "fatal defect of overbreadth . . . ." *United States* v. *Robel*, 389 U.S. 258 (1967). Proposed § (b) (1) (A) makes the failure to disclose one's mere membership in a Communist organization unlawful. Not even the faintest attempt at compliance with the tests set forth in *Yates* v. *United States*, 354 U.S. 298 (1957), and *Elfbrandt* v. *Russell*, 384 U.S. 11 (1966), is made. The sections in question do not require *specific intent* on the part of the member to further or accomplish the illegal goals of the organization, nor do they require *action* by the individual to further or accomplish such goals. The sections punish indiscriminately those who may seriously threaten the nation's security, and those which do not.

Third, the suggested provisions suffer from the vice of unconstitutional vagueness. When the wording of a statute is vague or ambiguous and that statute imposes substantial criminal penalties upon certain forms of membership in various types of organizations, the individuals affected cannot forecast whether the statute will apply to them. Individuals who sincerely believe their behavior is innocent may be punished; others may be deterred from lawful activities by the fear that such activity is unlawful. As the Supreme Court has indicated,

"A criminal prosecution under a statute regulating expression usually involves imponderables and contingencies that themselves may inhibit the full exercise of First Amendment freedoms . . . For '(t)he threat of sanctions may deter . . . almost as potently as the actual application of sanctions. . . .' The chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure." *Dombrowski* v. *Pfister*, 380 U.S. 479, 486–87 (1965).

In addition, as the vagueness increases, so does the discretion given to officials who enforce the act. Absent clear and precise standards, it becomes easy for the authorities to proscribe conduct which offends them.

The vagueness in the proposed provisions in question is obvious. These provisions penalize a member of an organization who knows or has reasonable grounds for believing that such an organization is in fact Communist. Proposed subsection (b) (2) (B) defines the term "Communist organization" as follows:

"(B) The term 'Communist organization' means a Communist-action organization, and any organization in the United States (other than a Communist-action organization) which (i) is substantially directed, dominated, or controlled by a Communist-action organization, or (ii) is substantially directed, dominated, or controlled by *one* or more members of a Communist-action organization, and (iii) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title."

A single Communist in *any* organization in any kind of leadership position, whether its a flower club, a Boy Scout troop or a literary club, or a P.T.A., taints the whole.

Under that definition every member of this committee and its staff must have belonged to some organization which would run afoul of this provision.

Would an international scientific society, comprised predominantly of members from Communist countries, be "primarily operated for the purpose of giving aid and support" to a Communist foreign government? How would an American scientist know whether his membership in such a society would subject him to punishment under the proposed amendments in question?

Proposed subsection (b) (1) (B) declares it unlawful for any individual to engage in "*any* employment which may affect the national security of the United States in a facility which is designated as (such) . . . under a currently valid designation by the Secretary of Defense. . . ." However, this provision is unconstitutionally vague. An employee in a defense plant who is also a member of a Communist organization must determine, at his peril, whether his particular employment "may affect" the national security. The proposed amendments do not provide standards by which the individual can determine whether his job or position "may affect" the national security. Thus, the individual cannot determine whether his conduct is punishable. He will either be deterred from engaging in activities which are perfectly lawful, or be punished for unlawful activities he

believed were lawful. "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes". *Lanzetta* v. *New Jersey*, 306 U.S. 451 (1938) at 453.

CONCLUSION

The Internal Security Act of 1950, 50 U.S.C. § 781 et seq., as amended, has been dying for years. Although the United States Supreme Court, in *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1 (1961), gave the Act a temporary, but illusory, reprieve, the victory was pyrrhic indeed. Over strong dissents from Chief Justice Warren and Justices Black, Brennan and Douglas, the Court in that case upheld the provision of the act which required the Communist Party to register as a Communist-action organization. Strongly dissenting, Mr. Jusice Black warned:

"I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish. The first banning of an association because it advocates hated ideas—whether that association be called a political party or not—marks a fateful moment in the history of a free country."

Mr. Justice Black's view soon gained the upper hand. In 1964, a unanimous Supreme Court in *Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70, 1965), held that, although the Communist Party as an organization might still be required to register, individual members of that organization could not. In light of the many penalties imposed on Communist Party members, compulsory registration would subject those members to substantial risks of self-incrimination. The relevant portions of the act, therefore, were found to violate the fifth amendment.

The Subversive Activities Control Board then tried again. Pursuant to 50 U.S.C. § 785, it issued an order resulting in the revocation of the passports of top-ranking Communist Party leaders. In *Aptheker* v. *Secretary of State*, 378 U.S. 500 (1964), the Supreme Court struck down 50 U.S.C. § 785 as "unconstitutional on its face", for it "too broadly and indiscriminately restricts the right to travel." 378 U.S. at 514.

Finally, in *United States* v. *Robel*, 389 U.S. 258 (1967), the Supreme Court again found that the Internal Security Act of 1950 abused important constitutional freedoms. The Court held that 50 U.S.C. § 784(a)(1)(D), which declares it unlawful for members of Communist-action organizations "to engage in any employment in any defense facility" when the organization is subject to a final registration order of the Board, was an overly broad, "unconstitutional abridgement of the right of association protected by the First Amendment." At 258.

Although the Supreme Court has not specifically dealt with many sections of the Internal Security Act of 1950, its recent decisions leave little doubt that many, if not all of the unchallenged portions of the act are patently unconstitutional. Mr. Justice Black, concurring in *Aptheker* v. *Secretary of State*, 378 U.S. 500, 518 (1964), stated in no uncertain terms that the "whole Act, including [50 U.S.C. § 785] . . . sets up a comprehensive statutory plan which violates the Federal Constitution" in that it constitutes a "Bill of Attainder," denies petitioners trial by jury and other procedural protection, and abridges freedom of speech, press and association.

On January 2, 1968, the United States Congress declared (50 U.S.C. § 791(i)) that the Subversive Activities Control Board would cease to exist on June 30, 1969, unless it instituted, between January 1, 1968, and December 31, 1968, at least one proceeding and hearing pursuant to the 1950 Internal Security Act. Almost no agency of Congress has had such a miserable record as the Subversive Activities Control Board. Its inaction has caused Congress to provide for its abolition; its few actions have violated the most fundamental personal liberties protected by the United States Constitution.

The time has come for Congress to repudiate entirely the Internal Security Act of 1950, rather than reverse the trend of the past few years. The measures before this committee today, which would only add obviously unconstitutional provisions to that act, afford an opportunity for such a repudiation. Each of these measures is aimed at a specific limited ill—denying employment in defense facilities to those "disposed" to disrupting them. Only a myopic view of the national interest, however, could suggest that their impact would be limited to that ill. Clearly this is a case in which the cure is far more dread than the

disease. Accordingly, we urge the unequivocal rejection of H.R. 15626, H.R. 15018, H.R. 15828 and similar bills.

The CHAIRMAN. Could you, in a thumbnail fashion, state why you don't think the bill satisfies the decision?

Mr. SPEISER. Well, initially, as far as it attempts to overturn *Robel*—H.R. 15626 would amend the Internal Security Act of 1950 and provide for barring from employment in defense facilities any member of an organization which is determined to be a Communist-action organization, who has knowledge or notice of its designation as a defense facility. This does not satisfy *Robel*, or the case of *Aptheker* v. *Secretary of State*, 378 U.S. 500, in which a similar provision making it a crime for an individual to apply for, or receive a passport with knowledge of, or notice that an organization to which he belongs has been denoted as a Communist organization by the Subversive Activities Control Board, was held unconstitutional. If *Aptheker* v. *Secretary of State* is good law, then this proposed revision of the Internal Security Act would be unconstitutional under that decision.

The CHAIRMAN. Is there any suggestion you would care to offer whereby it could be stripped out as a constitutional bill that would comport with the decision? Would you care to offer a suggestion?

Mr. SPEISER. No, I don't see how you can, Mr. Chairman.

The CHAIRMAN. In other words, so far as you are concerned, you don't want any legislation of any kind. That's the nutshell way of expressing it. Tell the truth about it.

Mr. SPEISER. I have never appeared before you, Mr. Chairman——

The CHAIRMAN. And you have never agreed with the committee, either.

Mr. SPEISER. —without telling the truth. May I continue? I would like to answer your question.

The CHAIRMAN. You would like to do what?

Mr. SPEISER. I would like to answer your question.

The CHAIRMAN. All right, all right.

Mr. SPEISER. No, I can't think of any legislation that would be constitutionally permissible, nor desirable, to accomplish the purpose that is attempted to be accomplished with this legislation. This may arise from a difference in what we conceive to be dangers to the country.

Mr. ASHBROOK. On that point, do you consider it dangerous to the country for Communists to have access to any secret information?

Mr. SPEISER. I think that is a relevant fact to consider, but that is not——

Mr. ASHBROOK. Wait a second. You either do or you don't. In other words, you don't.

Mr. SPEISER. No. Well, then, the answer is, no, I don't.

Mr. ASHBROOK. There is no information, anywhere, either in defense or defense industries, Justice, State Department, that you and your organization do not feel that any Communist should be entitled to, as much as any other American.

Mr. SPEISER. In the way you state it, Mr. Ashbrook, the answer is "No," based on the same kinds of distinction that the Supreme Court has made. That is, you don't brand a person as being a Communist and say, "That is the end of the question." You have to make a further

inquiry as to knowledge of illegal aims of an organization and specific intent to further those aims. You can't merely stop after making a determination that a person is a member of an organization.

Mr. ASHBROOK. Wait a second. We are saying he is a Communist. We are not making a determination whether or not he is; for the purpose of this question, the person is a Communist, whether he be Gus Hall or someone else. You wouldn't have any qualms about letting Gus Hall, for example, have access to any secret information or security information?

Mr. SPEISER. I think you have to make a further inquiry in every case, and I am not going to get into an argument about specific individuals. You used the term "Communist," which apparently has a meaning to you and which may not have the same meaning to me. This is the kind of problem that the Supreme Court has wrestled with in determining what are valid criteria for determining that individuals should not have access to information or work in certain industries.

Mr. ASHBROOK. Let's qualify that. Assuming he is a Communist who has the express purpose of turning information over to a foreign power, would you then think that it would be wrong for him to have access to secret information?

Mr. SPEISER. No, that wouldn't be wrong to bar him, nor would I think that it would be wrong——

Mr. ASHBROOK. You wouldn't think that would be wrong?

Mr. SPEISER. It would not be wrong to bar such a person from working in a defense facility having access to classified information. And I would make the same judgment about a non-Communist. The Communist question doesn't end your inquiry. It may start it, but it certainly doesn't end it, and what this legislation attempts to do is say, "This is the end of the inquiry."

Mr. CULVER. Mr. Chairman, may I ask a question to clarify a point?

The CHAIRMAN. Surely.

Mr. CULVER. I think Mr. Ashbrook's point is an excellent one.

Just for my own personal clarification, Mr. Speiser, do I understand you correctly that in the event all the criteria that have been articulated by the Supreme Court in this area were satisfied, concerning the knowledge of the Communist conspiracy, the active participation, and so on and so forth, that you would feel that in those particular carefully drawn situations, the Government was perfectly in its right, and as a matter of self-preservation, to bar access under those circumstances for a person that satisfied those criteria?

Mr. SPEISER. Yes. And by "access," I assume you mean access to a situation where they would have access to classified information.

Mr. CULVER. Exactly.

Mr. SPEISER. Yes. But let me make sure my position is understood, Mr. Culver. One of the rules that I get out of the *Robel* case is that you don't bar access, even for individuals, who——

The CHAIRMAN. Even what?

Mr. SPEISER. Even for individuals who fall within the category, if they don't have a position where they could harm national security, and you don't make a judgment like that, solely by legislative fiat.

The CHAIRMAN. Well, Mr. Ashbrook's question was penetrating. In that question, I think you asked the knowledge, with the knowledge that he would pass it on to a foreign government. So that's not hypothetical.

Mr. SPEISER. No, I have no problem with that, Mr. Ashbrook. Yes, if he has access to information, secret classified or any classified information, and there is knowledge that he would pass it on to a foreign government, you are right, the Government has a right to bar him from that kind of position, and whether he is a Communist or not is almost irrelevant. It is the question of his intention to pass it on.

Mr. ASHBROOK. It is a question of prejudging.

Mr. SPEISER. Very much so.

Mr. ASHBROOK. Your organization would take the position in favor of passing a bill that prejudged that every American might discriminate in housing, on one hand, it might be all right, and on the other hand, it might be wrong?

Mr. SPEISER. I am sorry, I don't hear you.

Mr. ASHBROOK. I say, you would certainly support a bill, the thrust of which would prejudge every American in wanting to discriminate in housing, but yet you won't prejudge when it comes to secret documents.

Mr. SPEISER. I am not aware of the fact that our support for the open housing provisions of the Civil Rights Act of 1968 involved a position of prejudging Americans. It would seem to me that that is not involved in that kind of situation. It set up standards in a law to accomplish the desired social end.

Mr. ASHBROOK. Which is what we are trying to do, here. These standards. If I can read you directly, the situation you agreed to is one that can never ever be accomplished. I mean, how many Communists are going to, or how many times are you going to come across a contract, or a known agreement, that a Communist is going to turn something over? You isolate the factual situation so narrowly, in my opinion, you never ever could make the law applicable in any relevant situation, because the thing you people seem to fail to understand is the whole thrust of the Communist organization is to conceal, is to engage in duplicity, to deceive.

Now how you can use these criteria for an organization like this is beyond me. I don't think you could ever make it applicable, the way you have drawn this.

Mr. SPEISER. Well, we do have a security program, under which consideration is given to whether classified information will be compromised. I think it has often been suggested that the effective spies, in our society, are ones who wouldn't have any connection with Communist or leftwing or radical organizations, simply because that kind of information is too easily picked up by security officers and agencies, and I think that this has been, to a great extent, true, as far as our problems with spying. So it isn't a question of leaving our information freely available, and having no security program. It is a question of judgment, I grant you that. But the difficulty, and the reason, I suppose, for our going off in diverse directions is the feeling that you can make a judgment as to whether individuals would turn over classified information, based on their political points of view. Now——

Mr. ASHBROOK. All right, to reiterate——

Mr. SPEISER. I raise a red flag, I realize, when I use that term before the committee, in talking about people who may or have been members of the Communist Party, or Communist organizations. But what the Supreme Court has puzzled about in this area—and I don't think they

have done it lightly, and you have had conservatives on the Court who joined in opinions as to what the Government can do or can't do to people who belong to the Communist Party—is that you can't make a flat judgment as to why people are Communists. There are different kinds of Communists. They join for different reasons, they join at different times. You can't assume that merely because a person is a Communist that he necessarily is a spy or is going to turn over classified information.

Mr. ASHBROOK. So what you are saying, to reiterate, and I want to make sure your words are correct, I believe you drew a distinction, a plain, everyday, average Communist, in any sensitive position with access to any secret information would be all right, as far as you and your organization is concerned.

Mr. SPEISER. You are putting words in my mouth, because——

Mr. ASHBROOK. You stated a Communist, a person who just happens to belong. I think you can answer that yes or no.

Mr. SPEISER. Except that I am not sure, again, Mr. Ashbrook, how you are using the term, and whether you are using it in the same sense that I am, when you say, "a plain, everyday, average Communist."

Mr. ASHBROOK. That is one you can't show is working for a foreign power. And you can't show he is going to turn over the information. He just happens to be a Communist.

Mr. SPEISER. And you can't show the specific intent to further illegal aims?

Mr. ASHBROOK. He just is a member of the Communist Party.

Mr. SPEISER. Then in answer to that question, the answer is no.

Mr. ASHBROOK. As far as you are concerned, he could have any sensitive position.

Mr. SPEISER. If all that you know about him is that.

Mr. ASHBROOK. Is that he is a Communist, period.

Mr. SPEISER. You have to know something more. That may be the basis for a further inquiry about him. But you can't use that, we believe, as the end of your inquiry, and on that basis, exclude him.

Mr. ASHBROOK. I see. Excuse me. Would the same thing go for an average, everyday member of the Mafia, belonging to the police force, or something like that? Simply because he belongs to the Mafia, you wouldn't prejudge him, let him hold any position of responsibility, influence, or exercising office?

Mr. SPEISER. I am not sure that the Mafia is as clearly defined a group in our society as the Communist Party, but the answer again is essentially the same.

Mr. ASHBROOK. The same old everyday Mafia member.

Mr. SPEISER. You see, I don't know what you mean by "Mafia." If you mean that he is a member of a family, and the family is involved in what is ordinarily referred to as the Mafia, then the answer is no.

Mr. ASHBROOK. I say "I am a member of the Mafia," and you don't think society has any right to say, "You should not be a chairman or head of a grand jury," or something like that.

Mr. SPEISER. Well, again, I don't know what you mean by the Mafia, as compared to what I think it means.

Mr. ASHBROOK. Well, I think that probably you believe that there are good and bad Communists, and there very well may be. I guess I just don't agree with you.

Mr. SPEISER. I even believe there is good and bad on the House Un-American Activities Committee.

Mr. ASHBROOK. Well——

The CHAIRMAN. What is that?

Mr. ASHBROOK. Good and bad on the committee.

Mr. CULVER. Mr. Chairman.

The CHAIRMAN. Go ahead.

Mr. CULVER. Mr. Speiser, do you think the further inquiry that would be necessary to establish the security-risk situation that would properly bar employment in a sensitive situation would be received by the criteria enunciated by the Chief Justice in the *Robel* case, or at least alluded to, when he specifically said the status makes it irrelevant that an individual may be a passive or an active member of a designated organization, that he may be unaware of the organization's unlawful aims, or that an individual—or that he may disagree with those unlawful aims. It is also irrelevant that an individual who is subject to the penalties of the statute may occupy a nonsensitive position in the defense facility.

Now in response to Mr. Ashbrook's question, assuming that you can satisfy those criteria, which can be relatively objectively ascertained, do you think that that would present a situation where properly and constitutionally, under this statute, you could bar employment?

Mr. SPEISER. I think so. Only if you have all of the factors that you mentioned, that the Chief Justice enunciated. You are asking what would be permissible, and I think as Mr. Culver has pointed out, there are some criteria set out by the Supreme Court; but it is apparent, as I read the bills, that this is not what is desired by the proponents of this legislation. Because I assume, Mr. Ashbrook, you feel that those criteria would be just too difficult to fulfill.

Mr. ASHBROOK. Well, I guess we would disagree. I think it is fair to say that a person should have a right to associate with any groups he wants, but I just fail to understand how a person can call himself a Nazi, for example, and not make himself subject to the argument that either knowingly or for one reason or another, accepting the connotation of what nazism has been in history, and its——

The CHAIRMAN. And the same would be true of the Ku Klux Klan.

Mr. ASHBROOK. The Ku Klux Klan. I don't doubt a bit but what you have warmhearted, honest, Christian Ku Klux Klanners, but it just seems to leave me cold to think that in taking up that mantle he isn't in a way accepting what the Ku Klux Klan means, exactly the same as communism. Their worldwide purpose of domination, subversion, and so on. I don't know how you can be a Communist and not accept what the thrust of the world communism has been for the last 50 years, and I guess that's where you and I could never agree.

Mr. SPEISER. Well, I think most of what you have just said, Mr. Ashbrook, seems to be that this person has become part of a group that has offensive ideas, repugnant ideas, and you are leaving out, in my view, the critical factor, whether you are talking about the denial of a security clearance, Government job, or a wide range of privileges, of what is he going to do, in that specific kind of situation.

You have to go beyond that factor, and this is where I think that our basic——

Mr. ASHBROOK. But who have been the people that have leaked the defense secrets in the last 20 years? Who are the Judith Coplons and

David Greenglass and the people like that. They were members of the Communist Party, and how you can say that "Oh, well, all these people in the past, they have been the ones that spied, they are the ones that turned our defense secrets over," and yet now you come along, and their successors as Communists will not do the same thing. I think exactly the opposite. The Government has the right, and we make judgments in many areas, to logically conclude that members of the Communist Party will do what Communists normally have done, over the last 30 years, and that is betray this country, turn its secrets over to a foreign power. I don't think it is illogical at all for the Government to make that conclusion. The findings of fact in the last 30 years are fantastic in favor of the argument that Communists act like Communists, and basically are going to work as a part of a foreign power.

Now you can disagree on that, but I think the facts are patently clear.

Mr. SPEISER. I haven't made a tote score on this, but my recollection is that while certainly you can point to Sobell and Greenglass, who did have membership or contact with the Communist Party, the vast majority of espionage cases that we have had, certainly in the past 15 years, have not involved members of the Communist Party. Many of them have involved members of the military, and it has been a straight, money transaction kind of situation in which there was no ideological factor present at all.

Mr. ASHBROOK. Who paid Jack Dunlap, for example, one of the people you are talking about? Who was he turning his secrets over to?

The CHAIRMAN. Exactly. You say, you overweighed the word "military" over "Communist," but at the same time there was a dual capacity there.

Mr. SPEISER. I have no doubt that there are representatives of foreign governments, Communist and non-Communist, who are in the business of buying information from anybody they can get the information from, on a wide range of subjects. There is no doubt in my mind that that is true. All I am saying is that because, for example, in some of the cases, in which military personnel have sold information, the accused have been Negro, is no reason to assume that Negro soldiers as a class——

Mr. ASHBROOK. Jack Dunlap wasn't a Negro.

Mr. SPEISER. The same may be said of the fact that some of the accused are white. You have to get beyond that.

Now the difference, I suppose, between us, is the fact that because you can point, as you can, to Communists who have engaged in espionage who were American citizens, that you assume that all Communists are going to engage in that, and this is something that the Supreme Court says you can't assume, because you have to go beyond that first factor to determine whether or not they are a threat to national security.

Mr. ASHBROOK. Well, the Supreme Court didn't exactly say this. It tied it also into the sensitive nature of the position, and had the same decision been on the CIA files, and so forth, I don't think they could have arrived at quite the same conclusion. The area of sensitivity of the defense work concerned or the Government work concerned would obviously make a difference.

Now, I don't agree with you. I think on very sensitive information, they probably would uphold the right, on the basis of the past history of the Communist Party, to say that the Communist, ipso facto, can't be allowed, and the Government has a right to refuse a Communist to be allowed to handle top secret information.

Mr. SPEISER. They had another factor, which the bill ignores, and that is the question of the scope of jobs. I think Mr. Liebling was making the point that not all jobs in defense——

Mr. ASHBROOK. The sweeper in a factory wouldn't—although he could pick up information, I concede—would not be as sensitive as an electronic-computing or data-processing person.

Mr. SPEISER. And when you set up a security program, which is going to consider the factors of organization, association, reading habits, and things of that kind, I don't think you can ignore the fact that that does have an inhibiting effect on whether people will go to a public meeting or hear someone speak or will subscribe to a particular magazine or newspaper, even though they disagree with it. That inhibiting factor, the fear that somebody is making a note of their activities, does have an effect on first amendment freedoms, which is the reason why, if you are going to have a program, as I concede that there should be, you must limit it as much as possible. You must limit it simply because, in a society where all jobs, especially with the scope of jobs that you have here, would come under a security program, that program is going to dry up the kind of dialogue and debate that we should have in a free society.

Mr. CULVER. Mr. Chairman, I thought, too, that the point, I think, in this regard, is that it is not only limited to the situation where you have a sign on the door that says "Communist Party Welcome," but we are talking about Communist-action groups, Communist-front groups, with all kinds of misleading names, and intentionally so, and I think the point with regard to the first amendment sensitivity is the extent to which that results in an inhibition as far as participation in the fullest sense, even by way of a threshold inquiry, into what is going on in the political process and what views and ideas and advocates are being given expression in a society at any one point in time.

Mr. SPEISER. I have nothing more to say, Mr. Chairman. I am willing to answer questions.

Mr. ASHBROOK. Your testimony has been illuminating and appreciated, and I don't want you to think we ever badger you. I like to hear your views. You and I wouldn't agree on a lot of things, but I certainly think you do a very able job of presenting your organization's view.

Mr. SPEISER. Thank you, Mr. Ashbrook. You are very kind.

The CHAIRMAN. The committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 12 o'clock noon, Tuesday, April 30, 1968, the committee was recessed, to be reconvened at 10 a.m., Wednesday, May 1, 1968.)

HEARINGS RELATING TO H.R. 15626, H.R. 15649, H.R. 16613, H.R. 16757, H.R. 15018, H.R. 15092, H.R. 15229, H.R. 15272, H.R. 15336, AND H.R. 15828, AMENDING THE SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

Part 1

WEDNESDAY, MAY 1, 1968

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

PUBLIC HEARINGS

The subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10:15 a.m. in Room 311, Cannon House Office Building, Washington, D.C., Hon. William M. Tuck presiding.

(Subcommittee members: Representatives Edwin E. Willis, of Louisiana, chairman; William M. Tuck, of Virginia; John C. Culver, of Iowa; John M. Ashbrook, of Ohio; and Albert W. Watson, of South Carolina.)

Subcommittee members present: Representatives Tuck and Watson.

Staff members present: Francis J. McNamara, director; Chester D. Smith, general counsel; and Alfred M. Nittle, counsel.

Mr. TUCK. The committee will please come to order. We are fortunate to have with us this morning the distinguished gentleman from California, Representative Bob Wilson, and we will be glad to have a statement from him at this time.

STATEMENT OF HON. BOB WILSON, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. WILSON. Thank you, Mr. Chairman, Governor. This room has a lot of happy memories for me. I served on the Armed Services Committee for 14 years, meeting in this room, and I must say the chairman, most of that time, was our former distinguished colleague, Carl Vinson, and he probably is equal to you only in courtesy and genuine friendship.

I certainly appreciate the opportunity to appear before you.

Mr. TUCK. Thank you very much.

Mr. WILSON. It is significant that the bill that I want to discuss deals with the military and problems of the armed services. Many of us have been quite concerned over the Supreme Court's decisions in recent years which tend to overemphasize the rights of criminals and Communists.

94-756—68—pt. 1——9

The *U.S.* v. *Robel* decision last December creates a serious threat to our national security by striking down section 5(a)(1)(D) of the 1950 Subversive Activities Control Act.

This important section prohibited the employment in a designated defense facility of any member of a Communist-action organization under final order to register in accordance with other sections of the 1950 Act.

In view of our continuing commitment to Vietnam and the tremendous amount of defense material needed to supply our troops there, the Court's decision is exceedingly ill timed. Carefully planned sabotage in any number of our major defense facilities could have a drastic effect on our output of urgently needed war supplies.

In reviewing the Court's decision, it appears that the crucial point in question is not the individual's membership in the Communist Party, but rather whether he was an active member whose employment would threaten the security of the specific defense facility.

Denying an individual employment in a defense facility, if he were a member of a subversive organization without knowledge of its subversive purposes, would be a violation of the first amendment freedom of association according to the Supreme Court.

Quiet frankly I find the Court's reasoning in this case incredible. The Communist Party since its inception has been dedicated to world Communist domination, using whatever means are necessary and most expedient. I find it difficult to believe that a member of this organization could be so naively unaware of its subversive intent.

Without seeming paranoic about the dangers of communism, we need to bear in mind its basic purposes here and abroad and to act accordingly to protect our national security.

For this reason, particularly in view of the Vietnam war, the Congress must act soon to clarify and revise the 1950 statute to assure that there are effective means to bar the employment of Communists in defense plants.

H.R. 15018 sets down specific procedures for designating a plant as a defense facility by the Secretary of Defense. The President is then authorized to institute such measures and to issue necessary regulations to bar from employment in a designated defense facility any person about whom there are reasonable grounds to believe he would be likely to engage in sabotage, espionage, or other subversive actions against the plant.

In accordance with this provision, the President may authorize inquiries regarding the nature of an individual's affiliations and activities to determine if there are reasonable grounds to consider him a probable subversive.

Frequently such individuals refuse to answer any inquiry of this sort, and therefore failure to respond may be considered adequate cause for debarment.

However, anyone so barred must be furnished the reasons for the action taken against him and be allowed an opportunity to defend himself, in a hearing if so desired. The bill outlines specifically the procedures to be followed and allows the individual involved adequate opportunity to demonstrate that his employment in no way threatens the welfare and security of the designated defense facility.

A number of bills have been introduced dealing with this same problem and I am hopeful that workable legislation can be reported

to the House to protect both the constitutional rights of the individual, in accordance with the *Robel* decision, and the security needs of our defense industries as well.

I would like to take this opportunity to thank the members of this committee for scheduling rapid consideration of these bills and appreciate the opportunity to submit testimony on behalf of H.R. 15018.

Mr. TUCK. Thank you, sir. We appreciate very much your coming over here and giving the committee the benefit of your views.

Mr. WILSON. Thank you, Mr. Chairman.

Mr. TUCK. I agree with you that the decision is a very unfortunate one. I hope that it—that the bill, or at least one of the bills now under consideration, may contain a provision that will enable us to revise the standard set by the Supreme Court in the opinion.

I would like to ask you this question, whether or not you have given any thought and consideration to the powers of the Congress to include a provision in this legislation, and in all other legislation, or a general provision in the law, making it so that no act of Congress and no provision of any of the State constitutions can be declared unconstitutional by the Supreme Court of the United States, unless at least seven members of the Court concur.

I understand, and I think everyone does, that the Supreme Court has the power to interpret the Constitution, but the question in my mind is, does not the Congress have the power to determine the number of votes by which that is done?

Do you have any thoughts on that subject?

Mr. WILSON. I should think that this would be one means of seeing that we are getting majority decisions by the Supreme Court. I understand that some of the decisions are obviously the work of the minority and, I believe, are ill timed.

Speaking to this bill, Mr. Chairman, I have a number of defense plants in my district and I have spoken with the presidents of these firms, and they are genuinely concerned about their lack of control of employment of individuals that they would just prefer not to have in their plants, from a security standpoint.

And I honestly believe that the mere existence of a bill of this type would be beneficial, that many of the problems that they now have on security clearances would disappear with passage of this bill.

Mr. TUCK. It seems to me, as one member of this committee, that many actions by the Supreme Court of the United States since Mr. Warren became the Chief Justice are opening up the floodgates to harmful, malicious forces, out to destroy this country, including the Communists, the executive department, and the Supreme Court; and unless something is done, there won't be any Constitution left, or anything else. And I am in favor of taking whatever action may be necessary to curb this Court and to stay its hand and stop it from rendering these foolish decisions that are destroying everything that we hold dear in America, for which our men surrendered their lives and spilled their blood on the battlefields of the world.

Mr. WILSON. Well I think Congress has been at fault in giving up its prerogatives which it has under the Constitution, not only to the judiciary, but to the executive branch as well.

We have quite a problem in the Armed Services Committee with the Defense Department dictating, making legislative decisions, and

certainly the judiciary and the Supreme Court have been making legislative decisions that are really the prerogative of Congress. And I would certainly support any move to try to clarify just how much authority the Supreme Court has over the Congress and, likewise, how much authority the executive has over the Congress.

I think it has been the fault of Congress in the past, in many instances, that we have just let both the courts and the executive run over us.

Mr. TUCK. Yes. I certainly agree with you and I am a strong adherent to the view that it is in the highest public interest to have three separate, equal, and coordinate branches of the Government. It seems to me that the Supreme Court has usurped the powers that are delegated to the Congress, in many instances, and also some of the powers delegated to the executive.

Mr. WILSON. Well, this minor piece of legislation—and it is relatively minor—I think it could very well lead the way in indicating that the Congress goes around a Supreme Court decision and finds a means, legislatively, to achieve our end, and I think it is important that we do these things.

Mr. TUCK. Well we certainly thank you very much and we are delighted to have had the privilege of inviting you back to your old home, this fine meeting room here.

Mr. WILSON. Thank you.

Mr. TUCK. And the Committee on Un-American Activities is glad to have you. We hope that your new quarters are even better, if possible.

Mr. WILSON. No, I think this is a much better room than we have. Thank you.

Mr. TUCK. Now we have another distinguished Member of the House of Representatives, my neighbor and colleague, the Honorable David N. Henderson, of North Carolina.

You may proceed, Mr. Henderson.

STATEMENT OF HON. DAVID N. HENDERSON, A U.S. REPRESENTATIVE FROM NORTH CAROLINA

Mr. HENDERSON. Thank you, Mr. Chairman.

It is a little strange to address you that way. We know you and love you as a Governor of our neighboring State of Virginia.

I appreciate the opportunity to appear here in support of H.R. 15626, Mr. Chairman, and have a very brief statement in support, if I may.

I want to make my position clear. My constituency in the Third Congressional District of North Carolina is not composed primarily of experts in the field of constitutional law. Nor is it composed of liberal law professors, politically appointed judges, or sophisticated theorists.

My constituents are ordinary, hard-working, taxpaying citizens who love their country, who support it against all enemies, both foreign and domestic, and who cannot understand why we cannot or should not prohibit by law a member of the Communist Party of the United States from being employed in work directly related to the military defense of our Nation.

Mr. TUCK. Now right at that point, I don't like to disagree with the distinguished Supreme Court of the United States. Maybe they might be right about the right of association. You may have the right to associate with anyone, but if you do associate with someone who is bad, why then it seems to me that you have the right not to associate with them.

Mr. HENDERSON. I certainly agree, Mr. Chairman.

I might also say at this point that I am sure that I would not have to convince the chairman, who visits eastern North Carolina as often as you do, about the sentiments of my people, but, for the record, I am delighted to have made the statement I did.

Mr. TUCK. Yes, I may say at that point that I am well acquainted with the territory represented by the gentleman from North Carolina and well acquainted with many of its citizens, a great number of whom have made themselves distinguished in the field of government, industry, and in the cultural world. It is a very beautiful, picturesque, and serene section of our country. And whenever I have the privilege of visiting that port of North Carolina, I come back with a renewed appreciation of our great country, and particularly the Old North State.

Mr. HENDERSON. Thank you, Mr. Chairman.

I am certain that the argument will continue to be advanced that we are attempting to exercise "thought control" to suppress freedom of thought, and all sorts of similar contentions.

It seems to me that somewhere, sometime, we must face the fundamental question, "How long are we going to permit avowed enemies of our constitutional form of government to advocate its violent overthrow?" At the present time, not only have we failed to attach any criminal penalties to membership in the Communist Party, but by permitting known Communists to be gainfully employed by defense contractors, we are literally feeding the hand which bites us.

Mr. Chairman, of course I recognize the long interest of you and other members of this committee, your very fine staff, in the pursuit of the objective that I have in mind.

Now in the case of *United States* v. *Robel*, decided December 11, 1967, the U.S. Supreme Court ruled that the provisions of the Subversive Activities Control Act of 1950 were unconstitutional when applied in such a manner as to deny employment to Robel, a known member of the Communist Party of the United States, at the Todd Shipyards Corporation in Seattle, Washington, which had been designated by the Secretary of Defense as a "defense facility" as that term is defined in the act.

Among other points mentioned by the Court was the fact that the Subversive Activities Control Act was too broad; that it did not establish meaningful standards for the designation of defense facilities by the Secretary of Defense, or provide specific authority for the Secretary of Defense to establish personnel screening facilities, including the regulation of the privileges of confrontation and cross-examination.

Frankly I cannot escape the conclusion that the Court in this case, as in so many others in a similar vein, was engaging in judicial nit picking of the nth degree, but I hope that in H.R. 15626 we have effectively provided for these nits to be eliminated.

Thank you for your courtesy.

Mr. Chairman, I might add that, as a member of the House Post Office and Civil Service Committee, as well as chairman of the Manpower and Civil Service Subcommittee, I feel strongly that the right to Federal employment should be controlled by the laws and regulations, laws of Congress and regulations that would be adopted by the executive pursuant thereto.

I would like to assure you and the members of the committee that if, in your deliberations, you feel that there is legislation that could support you in your effort that might be introduced in the area of civil service employment, I would be delighted to have such advice and will certainly sponsor any legislation that your very distinguished Un-American Activities Committee feels would be of assistance to close every possible door with regards to the employment of avowed enemies of our country in the employment of our own Government.

Mr. TUCK. Well, we thank you very much for the information you brought us in your very fine and most effective statement, and I certainly am one who takes the older view that employment in the Federal Government is a privilege, and not a right, and that the Government has the authority to set up standards.

Mr. HENDERSON. Not only in the employment in the first instance, but the right to continue in employment, Mr. Chairman.

Mr. TUCK. That has always been my view, too, and I am opposed to some of the recent executive orders, having to deal with people and groups. And I take the position that it is a great privilege to work for the Government at any level.

Mr. HENDERSON. Mr. Chairman, I would like to conclude by saying that I am very appreciative of the difficult technical problem of drafting legislation in an area as controversial and as difficult as this area is and I am delighted with what I think is a fine piece of staff work. And I certainly would like to commend the staff, through you, for the assistance that they gave to the sponsors of this legislation.

Thank you very much, sir.

Mr. TUCK. Thank you very much.

(At this point Mr. Willis entered the hearing room.)

The CHAIRMAN. Thank you for appearing. We appreciate it.

We have our colleague, my personal friend from Louisiana, Congressman John R. Rarick, of the Sixth Congressional District. Welcome. I will tell you what you can do, if that is your preference.

You can either file the statement at this point and let it go in the record, or you can speak from it. But I think if you could file it and summarize it, it would be easier for us to follow.

STATEMENT OF HON. JOHN R. RARICK, A U.S. REPRESENTATIVE FROM LOUISIANA

Mr. RARICK. Thank you, Mr. Chairman. It is a very short statement.

The CHAIRMAN. All right. The statement will be printed as a part of the record. And John, proceed and summarize it, please.

Mr. RARICK. All right, sir.

Mr. Chairman, Members of the Committee, I am proud to join with my distinguished colleagues in cosponsoring H.R. 15626, a bill to amend the Subversive Activities Control Act of 1950. This commit-

tee is duty bound to report favorably on this measure; the Congress must approve it; our Nation must have its protection. These are perilous times. We must do all in our power to assure our people that America has an invincible shield against the constant assaults of the Communist conspiracy. Our people look to us in Congress for this protection, sir.

Twice within the last 3 months, the U.S. Supreme Court has attempted improvidently to strike down the legal protection we so diligently sought to establish. This Court, which seems intent upon jeopardizing America's ability to protect herself from the Communist threat from within, struck down a vital provision of the Subversive Activities Control Act. This same Court, seemingly intent to destroy the security of our national defense program, has not only repudiated the word of Congress, but also the President of the United States' power to protect defense facilities from infiltration by subversive elements. The members of the Court ask to be given specific instructions of congressional intent in these matters and this legislation proposes to do just that.

The CHAIRMAN. Let me say this, John. That I agree with you on your criticism of the Court. What the Court said in that case, the *Robel* case, was that this bill, the present Internal Security Act of 1950, of which I was the author of the latest amendment, overreached itself and was too vague in a definition of what constitutes employment in the national defense, national defense facilities, so I tried, and my staff tried, the best we could, to be specific in order to comport, if humanly possible, with that decision.

I hope that we have done the job and that even the Supreme Court will find this new version to be satisfactory. At least we did the best we could.

Now let me say this. Last year this committee reported out, the Congress passed, and on January 2 of this year the President signed another amendment of mine to the Internal Security Act of 1950.

That amendment would breathe new life into and sustain the life of the Subversive Activities Control Board. The Senate added a provision to the House bill that unless the Attorney General filed proceedings citing Communist outfits before the Board within a year, the bill would die.

In conference with this committee and the Senators, we made a report, and in the conference report we said that the Attorney General would have within that year to report twice to Congress what he was doing. Thus far he has done zero, goose egg. Nothing. Do you agree that he is delinquent?

Mr. RARICK. I most certainly do. Yes, sir.

The CHAIRMAN. Well he is to testify—not he, but someone from the Justice Department. I was telling them this morning I was all ready for them, but it is going to be tomorrow, and I am going to be in Louisiana, but I am going to tell them that—by the way, I am going to be perfectly frank with you and with the Department, I am going to put my cards entirely on the table.

I am a very tolerant, maybe sometimes too tolerant a man, but I am not going to bail him out. They tell me that the Appropriations Committee will be keeping a careful watch on them when they come for their appropriations, and give them the living devil for not doing the

duty imposed upon them by the act to file proceedings against the Communists before that Board.

So I am sorry I won't be here tomorrow, but I hope and I know that my colleagues on both my right and left will carry the ball.

Mr. RARICK. Mr. Chairman, I almost shudder to contemplate what you have said, because it would indicate the Attorney General of the United States might be deliberately attempting to sabotage the efforts of this committee and the Congress to safeguard our people from the communistic movement, which is certainly gaining ground in our country.

Anybody can respect a man who does the best he can with what he has, but when a man takes no action and then says he does not feel the court will back him up, he is the judge and the jury.

The CHAIRMAN. Well let me tell you, I remember as if it were yesterday, one member, Mr. Yates, took me to task, year before last, or last year, when we debated the SACB amendment. He said, well that is all right, that is all right, but what about the Justice Department? Will they back you up?

I read on the floor of the House a letter by the Attorney General, in which he said that, within constitutional limits, if we passed the bill he would cite these Communists. And then I was brought to task by Mr. Culver of this committee, saying that the letter was meaningless.

Maybe it was meaningless, and I was too dumb to see through it myself. I don't know. But you remember that, when I read it.

Mr. WATSON. I remember it specifically: yes.

Mr. RARICK. Well, perhaps this committee had better start investigating the Attorney General's office and see what is wrong over there. The man is bound to be an attorney. He is obligated to preserve, defend, and protect the Constitution for the people of this country.

I had heard the testimony of the previous witness, and in examining the eminent body's final decree, they went out of their way to talk about the equities of nonsensitive, so-called, employment.

This man Robel was what, a machine operator? He had been so working for years and apparently, knowingly, to the people at the head of the factory, he had been in such a position, and I would like to leave this committee with this thought.

When it comes down to protecting the lives of our boys in combat and to maintaining peace of mind and security right here in our own country, the heartland, what in a defense facility is a nonsensitive job? A janitor? Sweep-up man who goes around to the waste baskets or sweeps shavings up? This is very definitely a sensitive position.

The CHAIRMAN. I expressed this just yesterday.

Of course, I understand that the Supreme Court held void the particular provision of the Internal Security Act which we seek to correct, on the ground that it violated the freedom-of-association clause of the first amendment.

I said, well, I don't; I believe very firmly in the establishment of religion provisions and the right of worship, and I'm not trying to promote a religious doctrine here. It is a fact, however, that I happen to be a Catholic, and I think after all, now that is a pretty old institution.

I said when he was teaching catechism, on freedom of association, the priest used to tell us, tell me who your company is, and I will tell you what you are.

And I said I seem to recollect that in my first-grade primer it said that one rotten apple in a barrel might infest the others, at least the apples coming in contact with it, so I think this freedom-of-association business is just stretched just a little bit too far sometimes.

I don't want to chastise the Supreme Court. There is freedom of association in this country. There should be. I don't think there is any question about that. But I doubt that a father would be proud, during the prohibition days, as I said yesterday, that a son would associate with Al Capone or I doubt that a father, to be perfectly frank—we are all of age around here—I doubt that a mother would be proud of her daughter's association with a slut, a woman of the street. I would doubt that. But however, constitutionally, I can appreciate the liberty of association, but I think sometimes they push that doctrine just a little bit too far for me. What about you?

Mr. RARICK. Mr. Chairman, I agree with you. I am wondering if we can expect the Supreme Court to give that same freedom of association to this open housing bill that just passed, by declaring unconstitutional any of the regimented attempts or programs to racially break down neighborhood patterns.

Certainly such laws would destroy freedom of association, because a man could not dipose of his own property to people of his choosing or his neighbors' liking. I wonder what they will do with that?

Mr. TUCK. Freedom of association also includes the freedom not to associate, doesn't it?

Mr. RARICK. Yes, it should. I think what the chairman said, Mr. Tuck, if a man wants to associate with Al Capone, let him associate, but I think that people who deal with him, especially if there is danger involved, should know who he is dealing with. Certainly so where there is a threat to the security of our Nation, I think this is the responsibility that we have.

The CHAIRMAN. Well, frankly I have withheld expressing the views I have just expressed, as chairman of this committee, because somebody is going to chastise me. I know that probably in tomorrow's press, some way, and I want to make it clear and repeat that I will keep my mouth shut, as a matter of law.

As a lawyer of 42 years of experience and as a man who taught law 10 years, I agree with the principle of the liberty of association or nonassociation—as a matter of law. But as a matter of philosophy and practice in everyday life, I think that the doctrine is more pragmatic in life than it becomes in technical law, and I think they push it too far as a matter of law.

Mr. RARICK. Well, I agree with you, Mr. Chairman, especially when it comes to employment in defense facilities.

The CHAIRMAN. Of course you are absolutely right.

Mr. RARICK. Federal employment is a privilege. It is not a guaranteed right.

Unless they have completely rewritten the Constitution and all theories of legal precedent, the sovereign is the sovereign and if we work for the sovereign, we can expect that we should have some curtailment of what otherwise might be rights or protections and privileges.

I even think that a clerk in the lunch room of a defense facility is a sensitive employment because people going in and getting a cup of coffee and relaxing for a minute are liable to make some comment, and certainly any foreign power or group out to advocate the overthrow of our country would gain intelligence with people in these positions.

I question this was the basis on which the Supreme Court ruled, but they talked about these things. They had to, I guess——

The CHAIRMAN. Well anyway I do hope that we have corrected this bill, and we have tried to, even the Supreme Court would say that from now on, at least, it will be nonlawful to employ people in national defense occupations that are specifically defined in this bill, and no question about it.

Mr. RARICK. Mr. Chairman, if I may leave my short statement here. I think that you gentlemen are well apprised of the situation we face, and the need that must flow from this committee, and I for one will support the legislation, vote for it, and do everything in my power to help you in getting this bill passed.

The CHAIRMAN. Thanks. We need more like you.

Mr. RARICK. I think this bill is necessary as a pledge of faith to the future of America itself.

The CHAIRMAN. Yes. Thank you very much.

Mr. RARICK. It is a pleasure to be here this morning, Mr. Chairman.

The CHAIRMAN. Thank you.

(Mr. Rarick's prepared statement follows:)

STATEMENT IN SUPPORT OF H.R. 15626 BY HON. JOHN R. RARICK

Mr. Chairman, Members of the Committee: I am proud to join with my many distinguished colleagues in cosponsoring H.R. 15626, a bill to amend the Subversive Activities Control Act of 1950. This committee is duty bound to report favorably on this measure; the Congress must approve it; our Nation must have its protection. These are perilous times. We must do all in our power to assure our people that America has an invincible shield against the constant assaults of the Communist conspiracy. Our people look to us in Congress for this protection.

Twice within the last 3 months, the U.S. Supreme Court has attempted improvidently to strike down the legal protection we so diligently sought to establish. This Court, which seems intent upon jeopardizing America's ability to protect herself from the Communist threat from within, struck down a vital provision of the Subversive Activities Control Act. This same Court, seemingly intent to destroy the security of our national defense program, has not only repudiated the word of Congress, but also the President of the United States' power to protect defense facilities from infiltration by subversive elements. The members of that Court ask to be given specific instructions of congressional intent in these matters and this legislation proposes to do just that.

Last December, in *United States* v. *Robel*, the Court invalidated section 5(a)(1)(D) of the Subversive Activities Control Act. This provision very simply stated that when a Communist-action organization has been ordered by the Subversive Activities Control Board to register, it shall be unlawful for any member of such an organization to be employed in any United States defense facility. Robel, an admitted Communist, continued to work in a Seattle shipyard, in the knowledge that the yard has been designated by the Secretary of Defense as a defense facility. The Communist Party had been ordered by the Subversive Activities Control Board to register, and the registration order had been upheld by the Supreme Court. The Court, however, upheld Robel's position and struck down the relevant provision of the act for the weak reasoning that it "contains the fatal defect of overbreadth because it seeks to bar employment both for association which may be proscribed and for association which may not be proscribed consistently with First Amendment rights." Moreover, objection was

raised in a concurring opinion that the power delegated to the Secretary of Defense to determine what constituted a "defense facility" was "so indefinite as to be meaningless."

In a defense facility, what position can intelligently be passed off as nonsensitive? The janitor who cleans off desks and disposes of debris, waste paper, and trash which may well contain telltale evidence to an outside security agent?

A restaurant employee who, in moments of idle relaxation by employees, may be in a position to overhear invaluable loose talk.

No—in a defense facility all positions of employment are sensitive when it comes to barring known and sympathetic agents of alien philosophies and governments determined to destroy the Government of the United States.

H.R. 15626 will remedy these legal hurdles. It has been so drawn to require not only proof that an organization is Communist, Fascist, totalitarian, or subversive, but that a member of such an organization has actual notice of its designation and that he has actual notice that a defense facility has been so designated. The measure takes no action to limit a person's "right of association," which, after all, is but judge-made law nowhere to be found in the first amendment.

Furthermore, H.R. 15626 clearly and explicitly defines congressional intent in relation to the power of the Secretary of Defense to designate defense facilities. He is given the power and directed by this measure to so designate any facility which may reasonably be said to affect national security—and the language of this portion of the bill is so precise as to present no ambiguity to misconstrue our intent.

Likewise the standards set forth for the exclusion of subversives from employment in defense facilities are clearly defined. Very plainly established are the standards to be applied in denying employment, but at the same time procedures are provided for the safeguarding of constitutional liberties.

This bill authorizes the establishment of security clearance programs to protect our vital defense facilities against sabotage or espionage by subversive elements. It also protects classified information relating to the national defense by authorizing an industrial security clearance program. And it provides for the administration and enforcement of these programs through a strong but fair system of investigation, hearing, and reviews.

Employment in positions which vitally affect the national security of our country—the vast majority—is not a right. It is a privilege, and the United States Government is entitled to—indeed, must have—the authority to set certain reasonable standards for employment. The measure proposed by H.R. 15626 does nothing to infringe on constitutional liberties; it merely prescribes reasonable standards for the protection of this Nation's defense posture. We cannot—indeed, we must not—compromise our ability to protect ourselves from the dangers of subversion by inimical forces.

I urge your committee to report favorably as a pledge of faith in the future of America.

The CHAIRMAN. Has Speedy Long arrived yet?

Here he is.

STATEMENT OF HON. SPEEDY O. LONG, A U.S. REPRESENTATIVE FROM LOUISIANA

Mr. LONG. Good morning, Mr. Chairman.

The CHAIRMAN. We are glad to see you.

You were here when I expounded my ideas about freedom of association and the Justice Department's doings or nondoings. I think you were here.

Mr. LONG. I was here.

The CHAIRMAN. I wish you would comment on that.

Mr. LONG. Mr. Chairman and Members of the Committee: I am happy to be here with you this morning in support of this proposed legislation and the bill, H.R. 15626, which several Members of the Congress have cosponsored or introduced with the distinguished chair-

man of this committee, and on which I am proud to associate my name as one of the cosponsors of this legislation. And, Mr. Chairman, I wholeheartedly agree with the views expressed by you in regard to the position taken by the Supreme Court in this matter of freedom of association.

Of course, as you so ably put it, there is a lot that the courts seem to stretch in reference to our Constitution and I am going to touch on some of that in my prepared statement.

I have a prepared statement which I would like to read at this time, if I may, to the committee, which expresses my views and sentiments in regard to this matter.

I will furnish to the committee at a later time today copies of this statement, which was prepared rather hastily, and I did not have the opportunity to prepare copies to bring with me this morning, but which I will present at a later time today.

Now I will proceed to give my prepared statement.

The CHAIRMAN. Surely.

Mr. LONG. As I pointed out, I am very pleased to have the opportunity to appear before and to testify before this great committee on the purposes and provisions of H.R. 15626, as I stated, a bill which I am honored to cosponsor with your distinguished chairman, and my fellow Louisianian, and with other Members of the House of Representatives.

It would obviously be a duplication for me to undertake an involved discussion of the five-fold purpose of H.R. 15626. I do not doubt that Chairman Willis and members of the committee have a detailed and extensive knowledge of this bill, amending the Subversive Activities Control Act of 1950.

Perhaps I should indicate at this point that the apparent implicit intent of this bill to set right flagrant injustices in several decisions handed down by the U.S. Supreme Court with relation to the Subversive Activities Control Act of 1950 is, in my view, a positive step in reclaiming the powers and responsibilities which Congress has lost to judicial usurpation. I submit, Mr. Chairman, that while we can answer the objections voiced by the Supreme Court in the *Robel* case with respect to prohibiting members of Communist-action groups from working in defense facilities with H.R. 15626, the time will soon come when the Congress must exercise its constitutional power to veto decisions of the Supreme Court which alter our democratic institutions and imperil the lives of our people. The Congress will be forced to act simply because the Supreme Court will continue its mad grab for power until they are forced to go to the people for a truly democratic mandate.

While we consider this bill, we should take special note, I think, of the appeals of certain defeatist segments of modern American society which tempt the Congress with the easy but illusory path of inaction now open as a result of the *Robel*, *Greene*, *Shoultz*, and other decisions of the U.S. Supreme Court. We are called upon to accept blindly these decisions, the theories of less than nine men who by the nature of their callings are insulated from the people and the mainstream of American political philosophy. We are asked to accept these nit pickings as the final word on the Nation's ability and propensity to protect itself from internal subversion. Indeed, it would be the path of least resistance, and few could successfully gainsay such inaction. Congress

could excuse such a course, if it chose to abdicate its responsibility for the policies and statutes which govern this Nation.

This bill, H.R. 15626, authored by Chairman Willis and other members of this committee and cosponsored by a score of other Representatives, is a courageous decision to follow the path of duty. It is a clear answer to the temptors that the Congress shall assert its constitutional and democratic mandate to overturn ill-advised and subversive decisions of the Supreme Court.

It will establish once again the will of the people as the law of the land, as expressed through their elected representatives, asserting the supremacy of representative democracy over judicial oligarchy.

Moreover, this bill will give the executive branch the strength to defend the Nation from the misguided, the inept, the criminal, and the subversive, whose machinations threaten the security of the American people.

The U.S. Constitution sets forth the rights and liberties of the American people: freedom of speech and religion; freedom to associate with others for political, business, and cultural purposes; freedom to follow the dictates of conscience. The Constitution also provides for the protection of American citizens in these rights and liberties from domestic and foreign violence. I think one of the most important implicit provisions of the American Constitution is that which protects the people in their freedom from ideology. The freedoms of speech and assembly and of religion are implicit freedoms from ideology, because they assure the individuals of their right to accept or reject any body of thought or of theory or of faith.

H.R. 15626, in my opinion, successfully differentiates between political activity, which is protected by the Constitution, and ideological activity, which is condemned and proscribed by the Constitution.

Any body of thought, theory, or action which operates to subvert all dissenting thought, theory, or action and seeks to destroy any freedom of dissent is an ideology. Such ideologies are therefore foreign to the basic concepts of American democracy and should not be allowed to prosper upon the subversion of American security. It is clear, I think, that communism, fascism, and all the isms from the darker quarters of the political spectrum are not political in nature in the sense that our American political parties and activities are political. It is equally clear that these foreign isms are ideological and dictatorial in nature and are consequently implicitly proscribed by the American Constitution, our body of laws, and all our traditions.

It is my sincere belief that these amendments set forth in H.R. 15626 in reality constitute simple enabling legislation to carry out the implicit provisions of the American Constitution, which provide for the preservation of democratic government and the protection of the freedoms of the American people as set forth explicitly in the Constitution.

Furthermore, the U.S. Constitution gives explicit instructions governing the amending process and, in my view, implicitly denies all other processes of amending it, either private, judicial, legislative, or executive, either peacefully or violently.

When the U.S. Supreme Court amends the Constitution by judicial interpretation, it is as guilty of subversion as the Communist or the Nazi who advocates and conspires to overthrow the Government by

force. And in the retrospect, we might observe that judicial subversion has been far more successful. If we carry the concept of judicial interpretation to its extreme but logical conclusion, we arrive at government by oligarchy, which is as repugnant to the American Constitution as are communism, fascism, dictatorship, monarchy, anarchy, and all the other ideological forms of tyranny.

It is time now for the Congress to assert itself to set right the present imbalance between the three branches of government. H.R. 15626 is a perfect vehicle for beginning this action, for it is sorely needed for America's protection and it addresses itself to the Congress for redress. Therefore, we are presented with a dual reason for favorably reporting and enacting this legislation, and I submit that the price of inaction today will be the gradual but certain decomposition of the responsibilities of the Congress and the freedoms of our people tomorrow, through the dictatorship of ideology, the most savage and ignoble form of totalitarianism. We have the moral and practical responsibility to take positive action on this measure, H.R. 15626, as quickly as possible, and I respectfully urge your approval and passage by the Congress.

Mr. Chairman and Members of the Committee, I think it is past due, the Congress is past due in asserting itself to set right the present imbalance between the three branches of our Government and this bill is a perfect vehicle for beginning this action, for it is sorely needed for American protection and it addresses itself to the Congress for redress.

I urge its approval, and pray that it passes the Congress.

Mr. Chairman, I think we are long, long overdue, and I think it appalls me the attitude that some segments of the American people have decided to take in regard to pampering, pampering and leaning toward and favoring people who set out to destroy, completely destroy and emasculate this great Nation of ours, and I want again to say that I am happy to have had the opportunity to appear here and address myself to this serious, most serious problem facing this great Nation of ours.

The CHAIRMAN. Well, I assure you we are grateful for your appearance and your contribution, Mr. Long.

Mr. LONG. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness will be our colleague, the Honorable Thomas Abernethy from Mississippi.

STATEMENT OF HON. THOMAS G. ABERNETHY, A U.S. REPRESENTATIVE FROM MISSISSIPPI

Mr. ABERNETHY. Mr. Chairman and Members of the Committee, I appreciate and welcome the opportunity to come before you today in support of the bill now under consideration, H.R. 15626.

I have a statement which I will submit for the record.

(Mr. Abernethy's prepared statement follows:)

STATEMENT OF HON. THOMAS G. ABERNETHY, A U.S. REPRESENTATIVE FROM MISSISSIPPI

Mr. Chairman and Members of the Committee:

I appreciate and welcome the opportunity to come before you today in support of the bill now under consideration, H.R. 15626, a bill "to amend the Subversive

Activities Control Act of 1950 to authorize the Federal Government to deny employment in defense facilities to certain individuals, to protect classified information released to United States industry, and for other purposes."

Permit me to express my most sincere regard for my friend and colleague, Chairman Edwin Willis, and for all members of this committee. By your vigilance and stalwart efforts in the interest of our national security, you are faithfully executing a difficult duty which the House of Representatives has confided to you. With you, I congratulate my friend from my own State, Chairman Eastland and his colleagues, who conduct the counterpart of your duties in the Senate of the United States. Senator Eastland's bill, the Internal Security Act of 1968, moves in the same direction as this bill we consider today—protection of the security of the United States.

I have the pleasure to be one of the 25 cosponsors of this proposed legislation, introduced by the distinguished chairman of this committee. This bill is directed to the protection of the national security in very vital and sensitive areas.

Among its purposes, the bill would restore vitality to section 5(a)(1)(D) of the Subversive Activities Control Act of 1950, which made it unlawful for members of Communist-action organizations to engage in employment in defense facilities. That section was held invalid by the Supreme Court in *United States* v. *Robel*, decided December 11, 1967, on the ground of "overbreadth," and hence "an unconstitutional abridgment of the right of association protected by the First Amendment." In the *Robel* case the Supreme Court pointed out that "precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." A prominent characteristic of this bill, H.R. 15626, is its "precision of regulation." In the reasonableness and explicitness of its terms, I believe the bill fully remedies the objections found by the Court in the provisions of the act.

To me it is inconceivable that the protections accorded to individuals under our Constitution should reach so far that our Government is left impotent to protect itself against serious injury or destruction. Of what avail will be the freedoms expounded in the Constitution if indeed that Government which gives reality to their existence is itself weakened or destroyed?

In addition to provisions which would give congressional sanction to security programs relating to defense facilities and to the release of classified information, the bill would also give express congressional authorization for measures establishing a personnel security clearance program for access to vessels, harbors, ports, and waterfront facilities under the Magnuson Act. These provisions are likewise of great importance for they remedy a serious deficiency pointed up in the Supreme Court's decision of January 16 of this year, in the case of *Schneider* v. *Commandant, U.S. Coast Guard.*

I know I need not remind you that this is no time to let down our guard—in any particular—bearing on our national security. Your committee, I know, has produced substantial evidence on the record respecting the subtle but dangerous subversive influence at work within our country in these troubled times.

I commend your committee for its efforts, and I thank you for this opportunity to appear on behalf of this bill. The bill, H.R. 15626, is an effective and important proposal to fill a serious gap in our defenses against the incursions of determined and ruthless enemies who would destroy our Government and our society. I express the hope that the bill will promptly be enacted into law and will be vigorously enforced.

STATEMENT OF HON. DANTE B. FASCELL, A U.S. REPRESENTATIVE FROM FLORIDA

The CHAIRMAN. At this point, I direct that the statement of Congressman Dante B. Fascell, Congressman from Florida, be inserted in the record.

(Mr. Fascell's statement follows:)

STATEMENT OF HON. DANTE B. FASCELL, A U.S. REPRESENTATIVE FROM FLORIDA, IN SUPPORT OF H.R. 15626

Mr. Chairman:

As it was my pleasure to join in the sponsorship of this bill, it is now my pleasure to more specifically detail the reasons for my action.

Because it is my belief that Congress with this bill is merely reaffirming the position set out in the Internal Security Act of 1950, 50 U.S.C. 781 et seq., it may be helpful at this point to take a minute to review the declared purposes of that act. Without laboring over each provision, it seems fair to say that with the act Congress, aware of the situation of the world, aware of the capabilities of our enemies, aware of the length to which enemies might go in an attempt to destroy our institutions, and aware of the value to our enemies of certain of our information, outlined in this act a program for combating internal subversion. Of concern to our discussion today was part of the program with which Congress intended to exclude from employment in defense facilities those persons found to be members of a Communist-action organization. Such persons, the act provided, were subject to criminal penalties if they remained in designated employment.

Also of interest to us today was the idea expressed, though the act did not speak in specific terms with regard to this matter, that those awarding contracts of a sensitive nature be able to screen those employees likely to have dealings with classified material.

And thirdly, of concern to us today was that measure adopted in the same year as the Internal Security Act of 1950, the Magnuson Act, 50 U.S.C. 191 et seq., which had as its purpose the prevention of sabotage of our port facilities. Though that act did not specifically adopt procedures for the screening of employees, it is my understanding that the Congress clearly had this in mind when it adopted this piece of legislation.

In other words, this bill asks the Congress to do nothing new. It does request the Congress to sharpen the technical language found objectionable by the Supreme Court to retain the overall objectives envisioned in the 1950 acts.

This being our objective, let us review the Court's objections to the earlier provisions and our proposals to overcome these objections.

Apparently not excluding the possibility that some narrowly drawn legislation aimed at keeping "from sensitive positions in defense facilities those who would use their positions to disrupt the Nation's production facilities," the Supreme Court in *United States* v. *Robel*, 389 U.S. 258 (1967), held that the present statute swept too widely, catching in its net not only those persons for which the bill was designed, but also persons in nonsensitive positions who were only passive members of such organizations. Our bill would limit the definition of defense facility in order to limit the inclusion to only those actually in sensitive employment. In addition, our bill would require in criminal proceedings that the prosecution show that the defendant was a member of such an organization knowing that it was designated as subversive and knowing that the employment was designated a defense facility.

The Supreme Court, in *Greene* v. *McElroy*, 360 U.S. 474 (1959) did not challenge the Congress' right to adopt or delegate some form of screening for persons in national defense industry; it merely found that the Department of Defense lacked the necessary authority to operate as they were doing. Our measure would merely give the President the authority with the safeguard that the person involved be allowed the broadest privilege of confrontation and cross-examination consistent with the national interest.

Similarly, with regard to the screening provisions in the Magnuson Act, to protect our vital ports, the Supreme Court in *Schneider* v. *Smith* on January 16, 1968, found that while Congress had granted broad authority to the President to assure the safety of our port facilities, it had not authorized the screening methods here applied. Our bill, then, adds the necessary authorization.

While the world has changed greatly since 1950, the need to protect our institutions, in particular our defense operations, from internal subversion and sabotage has not changed. For this reason, I urge your serious consideration of this measure.

The CHAIRMAN. This closes our witness list for today, and the committee stands adjourned until tomorrow at 10 o'clock.

(Whereupon, at 11:05 a.m., Wednesday, May 1, 1968, the committee recessed, to reconvene at 10 a.m., Thursday, May 2, 1968.)

HEARINGS RELATING TO H.R. 15626, H.R. 15649, H.R. 16613, H.R. 16757, H.R. 15018, H.R. 15092, H.R. 15229. H.R. 15272, H.R. 15336, AND H.R. 15828, AMENDING THE SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

Part 1

THURSDAY, MAY 2, 1968

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

PUBLIC HEARINGS

The subcommittee of the Committee on Un-American Activities met, pursuant to recess, at 10 a.m., in Room 311, Cannon House Office Building, Washington, D.C., Hon. William M. Tuck presiding.

(Subcommittee members: Representatives Edwin E. Willis, of Louisiana, chairman; William M. Tuck, of Virginia; John C. Culver, of Iowa; John M. Ashbrook, of Ohio; and Albert W. Watson, of South Carolina.)

Subcommittee members present: Representatives Tuck, Culver, Ashbrook, and Watson.

Staff members present: Francis J. McNamara, director; Chester D. Smith, general counsel; and Alfred M. Nittle, counsel.

Mr. TUCK. The committee will please come to order.

The Chair is happy to announce that the very distinguished Representative from the Commonwealth of Virginia is here, Congressman Abbitt.

Mr. Abbitt, we will be very pleased to hear from you.

Mr. Abbitt has been a Member of the Congress of the United States since 1948. He is most widely known and highly regarded throughout the State of Virginia.

Mr. Abbitt has a statement he would like to make on one of the bills that is now pending.

STATEMENT OF HON. W. M. ABBITT, A U.S. REPRESENTATIVE FROM VIRGINIA

Mr. ABBITT. I greatly appreciate the opportunity to appear before this illustrious committee. It is a great pleasure indeed.

I will take just a minute of your time.

I just want to say that I am so proud of the efforts of this committee in trying to salvage the Subversive Activities Control Board and to save it for the American people.

94-756—68—pt. 1——10

This committee is doing an excellent job. I was pleased to be one of the sponsors with Mr. Willis, along with the members of this committee, of H.R. 15626. I think it is widely important that this committee go into this bill fully and report it out and that the Congress enact it and that it be adopted into law.

It is one means of saving America, trying to salvage something for our people. I think it will go a long way toward trying to correct some of the decisions that have been so detrimental in recent years.

I ask unanimous consent to file a statement.

Mr. TUCK. Your statement will be filed and I take this opportunity to thank the gentleman from Virginia for his cooperation, not only as a copatron of the bill, but for his cooperation in bringing to us the information which he has collected.

(Congressman Abbitt's prepared statement follows:)

STATEMENT OF HON. W. M. ABBITT OF VIRGINIA

Mr. Chairman: I wish to express my appreciation to you and other members of the committee for inviting me to present my views with reference to H.R. 15626, which I cosponsored and which is the subject of hearings currently being conducted by the House Un-American Activities Committee.

Recent court decisions have rendered ineffective certain parts of the Subversive Activities Control Act of 1950, and it is essential that Congress take some action in order to plug the loopholes created by these decisions and to deal with the problems which have resulted.

I personally do not believe that the Communist infiltration menace to our country has lessened to any degree whatever. On the contrary, it is my view that we need to guard with more vigor than ever before the constitutional freedoms which the Subversive Activities Control Act of 1950 intended to protect. That act made it unlawful for members of Communist-action organizations to engage in employment in a defense facility, but the Supreme Court in *United States* v. *Robel* has largely voided this action. Other court decisions have made ineffective various sections of the act and an enumeration of these decisions and their effect is unnecessary at this point inasmuch as considerable testimony has already been given.

The real issue here seems to be whether the Congress should take action to overcome the problems raised by the courts in their decisions on provisions of the law. I do not believe there is any question but that Congress should move and move expeditiously in order that there not be any great concern on the part of the general public as to our intentions in this regard, although the situation has changed considerably since the basic law was passed nearly 2 decades ago. The threat to our security has increased if anything and certainly has not been lessened either by actions of the Communists overseas or by subversives here at home. The Federal Bureau of Investigation and other agencies of the Government have clearly indicated that subversives are constantly at work in the United States, and the evidence of their successes is still considerable.

I call upon the committee to take immediate action with reference to the problems which have been considered and which would be dealt with in the bill before you at this time.

May 1, 1968.

Mr. TUCK. Our next witness is Mr. Albert E. Green, assistant chief counsel, United States Coast Guard.

Mr. Green, we are delighted to have you before our committee this morning and we look forward to hearing your statement.

You may proceed.

STATEMENT OF ALBERT E. GREEN, ASSISTANT CHIEF COUNSEL, UNITED STATES COAST GUARD, DEPARTMENT OF TRANSPORTATION

Mr. GREEN. I am Albert E. Green, assistant chief counsel of the Coast Guard and I am pleased to have the opportunity to comment on H.R. 15626 particularly as it affects the Coast Guard.

I have with me this morning Captain Garth H. Read, who is chief of the Merchant Vessel Personnel Division, Office of Merchant Marine Safety.

Before discussing the proposed amendments to section 1 of the Espionage Act as amended, it may be helpful to discuss briefly the merchant vessel personnel screening program established in basically its present form during 1950.

Under the amendment to the Espionage Act enacted in 1950, the President was authorized to initiate measures to protect vessels, harbors, ports, and waterfront facilities against destruction, loss, or injury due to sabotage, subversive acts, accidents, or causes of a similar nature whenever he found the security of the United States endangered by actual or threatened war, invasion, or insurrection, subversive activity, or disturbances, either threatened or real, of the international relations of the United States.

Executive Order 10173 was issued under this authority indicating that the security of the United States was threatened by subversive activity and it established the basis for the Coast Guard's Port Security Program. That program had two parts, the first directed generally to the physical security of facilities, the second directed to personnel. It is the latter portion to which I will direct my remarks.

The personnel screening program relates directly to persons employed aboard merchant vessels of the United States. Under this program, the Coast Guard exercised authority to bar employment of a merchant mariner aboard a merchant vessel of the United States of over 100 gross tons unless his normally required document contained an endorsement evidencing that the Commandant was satisfied that his presence aboard the vessel would not be inimical to the security of the United States.

In addition, authority has been exercised to bar persons from waterfront, port, and harbor areas and from vessels located therein whenever these areas are "restricted" and also from certain types of small boats which in their normal course of employment contact larger vessels on which mariners must have endorsements unless these persons have "Port Security Cards" issued by the Coast Guard under the same conditions as for endorsement of merchant mariners' documents.

Until 1955 a person applying for an endorsement to his merchant mariners' document or for a Port Security Card was denied clearance before a hearing was held if, upon investigation derogatory information reasonably sufficient to raise a doubt was uncovered. The applicant was informed, however, of the general grounds for denial and was afforded an opportunity to appear before a board to rebut the derogatory information. Much of this information was obtained from confidential informants, and names, dates, and places were not furnished to the applicant and in most cases heard by a board, Government witnesses did not appear. In effect, the burden was upon the

applicant to prove that he was not a risk. Under this procedure, it was possible to appeal an adverse decision of the board to a headquarters board where basically the same format was followed. Under this system, only about ¾ of 1 percent of all applicants, and there were several hundred thousand, were finally denied the endorsement or the card.

The procedure I have just described was successfully attacked in court and as a result of the decision in *Parker* v. *Lester*, 227 F. 2d 708, in late 1955, the Coast Guard completely overhauled its procedures to correct the deficiencies noted by the court. These included the absence of adequate notice of the basis for denial, the failure to produce witnesses for confrontation and cross-examination, and reliance upon confidential information in reaching a denial. The result of the revision in procedure was a marked decrease in the number of denials.

Under this procedure, the Coast Guard had taken the position that failure of an applicant to answer questions submitted to him in the course of the application procedure prevented the Commandant from making a final determination in the matter, and, accordingly, the application was not processed any further.

This procedure was also attacked in court, and on January 15, 1968, the Supreme Court in *Schneider* v. *Smith* held that although the present act, 50 U.S.C. 191(b), authorized keeping the merchant marine free of saboteurs, it did not authorize the establishment of the screening program for personnel on merchant vessels. The Court stated it was loathe to assume that Congress in its grant of authority to the President to safeguard vessels and waterfront facilities from sabotage and other subversive acts undertook to reach into the first amendment area. The Court ruled that the act speaks only in terms of action and not in terms of ideas, beliefs, reading habits, or social, educational, or political associations and therefore does not authorize a screening program to inquire into these areas.

This decision has the effect of eliminating the personnel screening portion of the Port Security Program and leaves the Coast Guard without any authority to prevent the presence of merchant mariners or other persons on board vessels and in waterfront port or harbor facilities when their presence represents a risk to the security of the United States.

The amendments proposed in section 2 of H.R. 15626 would cure the deficiency found to exist by the Supreme Court in the *Schneider* case and would therefore permit the Coast Guard to continue a screening program.

To the extent that the standards, provisions, and regulations authorized under the proposed section 5A to be added to the Subversive Activities Control Act would be made applicable to the screening program, no difficulties are anticipated in accommodating the existing procedures to any new requirements. As a matter of fact, as a result of the changes made in 1956, the existing procedures parallel many of the guidelines found in section 5A.

That concludes my prepared statement. I would be happy to answer any questions that you might have.

Mr. TUCK. We thank you very much, Mr. Green, for your splendid statement, and I take it that you share the view which I have, and that

is it is imperative that the Congress of the United States or some agency of the Government take some steps that are necessary to keep these subversive elements out of our defense program.

Mr. GREEN. Yes, we concur completely, Mr. Chairman.

Mr. TUCK. I have here a letter in the nature of a memo from the agency which will be made a part of our record.

(The letter from the Office of the Secretary of Transportation follows:)

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C.

Hon. EDWIN E. WILLIS,
Chairman, Committee on Un-American Activities,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 15626, a bill "To amend the Subversive Activities Control Act of 1950 to authorize the Federal Government to deny employment in defense facilities to certain individuals, to protect classified information released to United States industry, and for other purposes."

The proposed bill would amend the Subversive Activities Control Act of 1950 by changing the definition of "facility", by changing the provision relating to employment of members of Communist organizations, by changing the provisions relating to the designation of defense facilities, by adding a new section 5A to the Act relating generally to measures and procedures designed to protect and safeguard defense facilities and classified information including requirements for inquiries, investigations, proceeding and hearings to determine the fitness and qualifications for employment in or access to a defense facility or access to classified information, by changing the definition of "affiliate", and by changing the requirements for publication of final orders of the Subversive Activities Control Board.

Additionally, the bill would also amend the Act of June 15, 1917, (50 U.S.C. 191) by adding provisions to section 1 of title II of that Act which would specifically authorize a program to deny, revoke or suspend access to vessels, harbors, ports, and waterfront facilities making the procedures, standards, provisions, and regulations authorized by the proposed new section 5A apply to such program to the extent deemed applicable by the President. A new paragraph would also be added to the section dealing with jurisdiction of courts to issue restraining orders and temporary or permanent injunctions and requiring the exhaustion of administrative remedies in matters dealing with the denial, suspension, or revocation of employment on or access to vessels, harbors, ports and waterfront facilities.

With respect to the provisions contained in section 1 of H.R. 15626 dealing with defense facilities and the procedures of the proposed section 5A, the activities of this Department have not resulted in any accumulation of knowledge or expertise which would permit a meaningful comment. Accordingly, the Department would defer to the views of the Department of Defense and the Department of Justice with regard to these provisions of the bill.

The amendments proposed to be made to the Espionage Act would directly affect the activities of the Coast Guard in connection with its merchant vessel personnel screening program. On January 16, 1968, the Supreme Court held in *Schneider* v. *Smith,* that although the present Act authorized keeping the Merchant Marine free of saboteurs, it did not provide express authority for the personnel screening program which had been employed for some time by the Coast Guard. The Court indicated that the Act speaks only in terms of actions and not in terms of ideas, beliefs, reading habits, or social, educational, or political associations. Since this was so, a screening program involving inquiry into the latter areas was not authorized by the Act.

The amendments proposed in section 2 of H.R. 15626 appear to cure the deficiency found by the Supreme Court in *Schneider* and would furnish an adequate statutory basis for continuing the personnel screening program. The Coast Guard in the operation of the screening program in the recent past, has followed procedures paralleling those found in the proposed new section 5A of the Subversive Activities Control Act. As a result, there would be no great difficulty in accommodating the procedures of the program to those found in the proposal.

In order to make clear that the provision amending the Espionage Act would apply to all vessels in the United States ports regardless of flag it is recommended that the "to such vessels", at line 23, page 23, of H.R. 15626 be changed to read "to vessels, foreign and domestic,".

Subject to the foregoing comments, the Department of Transportation would have no objection to the enactment of H.R. 15626.

The Bureau of the Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report for consideration of the Committee.

Sincerely yours,

/s/ John L. Sweeney
JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

Mr. CULVER. I have no questions, Mr. Chairman.

Mr. TUCK. We thank you very much indeed and we do have appreciation of your cooperation in supporting this proposal.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. TUCK. Our next witness is Mr. Stanley J. Tracy.

We are delighted to have you appear before our committee.

Mr. Tracy is the former Assistant Director of the Federal Bureau of Investigation. He is an outstanding American.

STATEMENT OF STANLEY J. TRACY, FORMER ASSISTANT DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

Mr. TRACY. Thank you, sir. I have a prepared statement, Mr. Chairman, and I want to thank you for this opportunity to appear before your committee to discuss the provisions of H.R. 15626, a bill to amend the Subversive Activities Control Act of 1950 and to authorize the Federal Government to deny employment in defense facilities to certain individuals and to protect classified information released to United States industry.

I was for 20 years at the headquarters of the FBI, retiring as an assistant director in 1954.

I was associate counsel of the Commission on Government Security which studied the Coast Guard program. The Commission made recommendations in 1957 that there be a legislative basis for a Coast Guard program which is one of the provisions of this bill.

I would like to comment on the bill itself.

The proposed amendment of section 5(b) is particularly important and pertinent to a sound security program. Authorizing and directing the Secretary of Defense to designate defense facilities in the manner provided, yet permitting both management and labor to voice opposition to such dsignation if either wishes to do so, is very sound procedure.

Management, labor, and Government should be full partners in every defense facility operation.

With reference to the wording of the bill, I suggest that subsection 5(b)(6) be amended by inserting the words "or indirectly" in line 15 on page 3 so that it will read: "* * * or other act of subversion would directly, or indirectly, impair the military effectiveness of the United States * * *."

In making this suggestion I have in mind that there could be instances where direct impairment might not be subject of proof beyond a reasonable doubt.

The proposed requirement that each employee or applicant for employment be required to sign a statement that he knows that such facility has been so designated as a defense facility is particularly good—that is page 4 of the bill. May I suggest that this provision would be strengthened if it were required that such signing be witnessed by a representative of management who must also sign with a statement that he made certain that the employee or applicant fully understood the term "defense facility." Many applicants and employees have a language or other barrier to a complete understanding of Federal defense procedures, problems, and need.

The proposed new section to be inserted after section 5—page 4 of the bill—is a much-needed provision as it makes the legislative intent very clear as to the authority being given to the President. This is the section entitled "Protection of Defense Facilities and Classified Information." With reference to subsection (5) on page 8 of the bill, it is suggested that the word "known" be inserted in line 10, so as to read: "establishing or continuing sympathetic association with a known saboteur, spy, traitor, seditionist * * *."

The Supreme Court has reversed a number of cases on the ground that a statute is vague in its wording.

It is suggested that subsection (3) on page 12 of the bill be amended by deleting in lines 16, 17, and 18, the words: "the Director of the Federal Bureau of Investigation, or any Federal agency." As a subordinate bureau, the FBI does not make such determinations, nor does any other Federal agency, other than the Department of Justice itself.

It might be well to add the words "or found to be such by a committee of the Congress or a Federal court." In the event the Congress authorizes by legislation a central security agency, such an agency might be given such authority in addition to the Attorney General.

It is also suggested the subsection (6) on page 13 of the bill be amended by deleting the words "at common law," in line 18. Or, substitute the words "in fact" for the words "at common law." The State of Louisiana, for example, inherited its legal system from the civil law of continental Europe rather than from the common law.

It is suggested that subsection (1) on page 17 of the bill, lines 21–25, and page 18, lines 1–5, be amended to read:

> In cases where the President, or his designee, at any time personally determines that the procedures authorized by other subsections of this section cannot be employed with respect to any individual consistently with the national security, the President may authorize his designee to determine the facts and deny, suspend, or revoke such individual's employment in or access to any defense facility engaged in classified military projects or access to classified information released to any facility if the facts in his opinion so justify. An appeal on the record may be made to the President whose decision shall be final.

If an appeal were denied in such an instance, I personally feel that the Federal appellate courts, and especially the Supreme Court, would hold that due process had been denied.

The provision that no court of the United States shall have jurisdiction of any action or proceeding on the complaint of any person except after exhaustion of the administrative remedies is a splendid goal, but I would like to see a further provision to the effect that decisions of the Federal circuit courts of appeal shall be final. Surely, one appellate review is sufficient, and the Congress has the authority to set such a limitation. The President bears the responsibility for the

preservation of our Nation from enemies, foreign and domestic, and the further responsibility for the protection of life and property of all citizens and residents. In the exercise of these responsibilities, he should not be handicapped by unnecessary or prolonged appeals.

The decision of the Supreme Court in the case of *United States* v. *Eugene Frank Robel* is cause for great concern. This decision of December 11, 1967, held that a known member of the Communist Party may not be barred from employment in defense industries which are important to the national security and based its decision on the first amendment.

The bill under consideration today will, I hope, meet the test of constitutionality, because the country desperately needs protection internally from the Communist conspiracy dedicated to force and violence.

I call attention to the words of Mr. Justice White and Mr. Justice Harlan in the *Robel* case:

> The constitutional right found to override the public interest in national security defined by Congress is the right of association, here the right of respondent Robel to remain a member of the Communist Party after being notified of its adjudication as a Communist-action organization. Nothing in the Constitution requires this result. The right of association is not mentioned in the Constitution. It is a judicial construct appended to the First Amendment rights to speak freely, to assemble, and to petition for redress of grievances. * * *

The majority opinion completely ignores the fact that individual rights and the right of association are not absolute. For example, freedom of petition, formerly unregulated, has been severely restricted to insulate legislators from improper influence.

Freedom of association must pay obeisance to the antitrust laws, labor laws, and other laws.

A citizen or resident must register with the Attorney General if he is acting as the representative of a foreign principal, yet the Communist Party, U.S.A., acting as the agent of a foreign principal cannot be forced to register by courtesy of the Supreme Court. The dissenting opinion in the *Robel* case pointed out, and I quote: "The law of criminal conspiracy restricts the purposes for which men may associate and the means they may use to implement their plans."

Is the Communist Party, U.S.A., not a criminal conspiracy to destroy the United States by force and violence? The Congress so determined when it passed the Subversive Activities Control Act of 1950 (64 Stat. 987). A Federal district court, a circuit court of appeals, and the Supreme Court itself so determined in the decision of 1961 in the case of *Communist Party, U.S.A.* v. *SACB* (367 U.S. 1). The Court determined that the party was directed and controlled by a foreign government or organization.

Mr. Justice Brennan, voting with the majority in the *Robel* case, said his quarrel with the provision of the law was based on the fact that the Congress gave the Secretary of Defense no meaningful standard to govern his designation of defense facilities, thus creating a danger of an arbitrary application of criminal sanctions in an area of protected freedoms. This is indeed tortured reasoning when applied to a criminal conspiracy such as the Communist Party.

Justice Brennan does have a good point with reference to memberships and associations other than the Communist Party. The Commission on Government Security in its report of June 1957 did recommend

a legislative base for an industrial security program. The text of its proposed legislation is to be found on pages 702 through 704 of the report.

It was pointed out in the report that the operation of the Department of Defense Industrial Security Program rested upon Government regulations and upon contractual obligations (Report pp. 249, 250), but these did not constitute a legal basis. No statute or Executive order was found by the Commission which expressly authorized the Department of Defense to establish such a program. Implied authority can be found in 5 U.S.C. 22, which states:

> The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. * * *

The Armed Services Procurement Act, 41 U.S.C. 151, et seq., authorizes each of the three military departments to negotiate procurement contracts of "any type" which in the opinion of the agency head will promote the best interests of the Government.

Congressional policy is clearly set forth in 18 U.S.C. 793 and 798 and supplies indirect authority for an industrial security program. Congress said that it is illegal for any person having defense or classified information to disclose the same to unauthorized persons or with intent to injure the United States.

The President, under Article II, section 3, of the Constitution, is directed to take care that the laws are faithfully executed by his subordinates, and the Industrial Security Program now in effect has as its objective the safeguarding from disclosure of defense or classified information.

In addition, Executive Order 10501, November 5, 1953, states that "it is essential that certain official information affecting the national defense be protected uniformly against unauthorized disclosure:"

The authority for this Executive order may be found in Article II, section 2 of the Constitution which provides that:

> The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States * * *.

The majority opinion in the *Robel* case contains an astounding statement:

> Section 5(a)(1)(D) denies significant employment rights under threat of criminal punishment to persons simply because of their political associations. * * *

The Communist Party, U.S.A., is not a political association: it is in fact a criminal conspiracy and so determined by the Supreme Court itself. I sincerely hope that the Congress will some day soon pass legislation denying employment rights to members of the Communist Party for any job in the Federal Government, sensitive or nonsensitive. The taxpayers of this Nation should not have to finance those who would destroy our form of government by force and violence. The first duty of any government is to preserve itself.

Since H.R. 15626 was introduced in the House of Representatives on February 27, 1968, a new procedure has been placed in effect as of May 1, 1968, by the Secretary of Defense which I feel is contrary to

the intent of the Congress as expressed in many laws passed. I feel it is contrary to the intent of the bill under discussion here today.

This procedure concerns the handling of personnel and is called the Privacy Personnel Security Questionnaire. I submit herewith for the record a copy of the Department of Defense Industrial Security Letter of February 29, 1968.

I quote from this letter:

> The personal information which is considered of a privacy nature and warrants special handling in the clearance program includes: arrest records; type of discharge from military service; prior security clearance suspension, denial or revocation; history of mental or nervous disorders; drug addiction; excessive use of alcohol; and membership in organizations cited by the Attorney General. Under the revised policy the employee will provide this information to the Government as a privileged communication. * * *

I submit that this is a most astounding procedure, for an agency of Government to deny essential information to over 13,000 cleared contractors of private industry. These employees are not Federal employees. Surely private industry has the right to know the background of the employees it hires and to determine whom they will or will not hire. Only a dictatorship has the power over the private sector to the extent inherent in this procedure now in effect as of yesterday.

The Department of Defense in negotiating defense contracts only needed to make it a part of a defense contract that personnel records be given the same protection as is required for classified documents and that is to limit access to those employees of a contractor who have a "need to know."

No additional cost would have been incurred, whereas under the procedure now in effect there will be a significant cost. But cost is not as important as the handicap to the private-sector employer in not knowing essential information. How can a contractor intelligently supervise employees or determine to what jobs they shall be assigned if he does not know the information now to be withheld from him?

Contractors have been granting "confidential" clearances at time of initial employment, and effective performance on classified contracts assumes a capability on the part of industry to employ honest, decent, and reliable employees who are capable of doing the job for which they are hired. Contractors have a right to all information, derogatory or not, in order to determine suitability for employment.

On page 6 of the Industrial Security Letter of February 29 appears this astonishing statement:

> At the same time, the individual employee who requires access to classified information will be assured that his constitutional right to enjoy privacy on privileged or personal matters remains inviolate.

Mr. Chairman, may I ask that this letter be made a part of today's hearing record?

Mr. TUCK. It is so ordered.[1]

Mr. TRACY. When an individual has had a public trial, been convicted, and served time in a prison, it is a matter of public record and he has no constitutional right to enjoy privacy, and there is no constitutional bar to any citizen examining the public record or of asking him about it. If the Department of Defense can bar such information

[1] Department of Defense Industrial Security Letter of Feb. 29, 1968. See appendix, pt. 2, pp. 1807–1813.

to an employer, it can deny such information to the press and to the Congress.

This is a most dangerous precedent. We live in an open society, and I think it should be kept that way. The intent of the Congress as set forth in the bill we are discussing today is to protect our national security, but if employers do not know their employees' backgrounds, how can they work with Government intelligently in that effort?

I sincerely hope that the Congress will hold hearings on this matter and demand that the Department of Defense prove its right to institute the privacy security personnel procedure, in private industry.

This committee is concerned about the security of our ports, and the bill under discussion expressly authorizes the President to set up a personnel screening program in view of the decision of the Supreme Court in the case of *Schneider* v. *Smith*, decided January 16, 1968.

The privacy security questionnaire does not apply to the Coast Guard as it is under the Transportation Department. In the case of a declared national emergency, however, it would come under the Department of Defense and private employers would be denied essential information. Perhaps this bill could be amended to provide that private employers may not be denied information that is a matter of public record.

The protection of our ports and waterways is a vital necessity in times of peace or war. There is ample justification for a port security program.

President Wilson recognized the need when he issued a proclamation in 1917 (40 Stat. 1725, Dec. 3, 1917) and ordered the Secretary of the Treasury to issue such rules and regulations as would put into operation title II of the Espionage Act (40 Stat. 217).

Prior to World War II, Congress clearly defined Coast Guard jurisdiction in an act passed June 22, 1936, vesting the service with full law enforcement powers on the high seas and navigable waters, but excluding certain inland waters (40 Stat. 1820).

In 1941 Congress eliminated the restriction on inland waters (55 Stat. 585) and also enacted legislation providing for a Coast Guard Reserve and a Coast Guard Auxiliary to utilize the owners and their boats in certain operations (55 Stat. 9, 11). In 1955 Congress expanded the Auxiliary to include aircraft and radio (58 Stat. 759).

By Executive order in 1942, the Navy was assigned full responsibility for protecting vessels, harbors, ports, and waterfront facilities not directly operated by the War Department (E.O. 9074, Feb. 25, 1942). The President recognized the danger from loss or injury by accident, sabotage, subversion, or other causes. The job was assigned to the Coast Guard, which since 1949 has been a branch of the Armed Forces officially, by an act of this Congress (63 Stat. 496).

Communist infiltration into the maritime unions became manifest by 1934. Party participation in the San Francisco dock strike of that year attested to the growing Communist influence in the West Coast unions. As to the East Coast infiltration, the party measured its own successes and expectations in the following words:

> First, a number of strikes have taken place aboard ship. These struggles are beginning to take on a mass and national character. For instance, the strike of 14 coal ports in Boston is an example. We have been able to initiate these strug-

gles, extend them to other ports, broaden them out from individual ship strikes to larger mass struggles becaose [sic] we have carried on the policy of concentration. Our main energy was concentrated upon 1 company and 45 ship strikes were developed out of this concentration. As a result these struggles have become a lever which we are now using to set the masses into action and winning the mass of the workers.[1]

The party stated as follows in 1937:

In this generally favorable situation, our party members have a chance to work with tens of thousands of workers. We are an influence in determining policies. Large numbers of seamen, longshoremen, and other workers from the industry have joined the party in various ports from coast to coast.[2]

That Communists dominated certain maritime unions by the end of World War II has been established through studies on how the leadership in those unions has consistently adhered to shifting patterns of the Communist Party line.

When Germany breached its nonaggression pact with Russia and invaded the Soviet Union in 1941, certain of the maritime unions called for United States support of Russia. After the war, when Russo-United States relations became strained, the same unions continued to support Soviet policies, even though to do so put such unions in a position of openly opposing undertakings of the United States in both domestic and foreign matters.

The CIO became alarmed, investigated, and expelled nine affiliates, including three maritime unions, for the reason that such unions had, for more than a decade, invariably conformed their policies to each shift in the Communist Party policy.

In addition, other evidence taken at congressional hearings further revealed the sinister danger to maritime security implicit in the Communist control of these unions.

The American Communications Association, expelled from the CIO in 1950, was criticized by Admiral S. C. Hooper as "* * * the nucleus of the Communist Party cell in United States communications * * * a well-known fact in the industry, and was shown by the fact that 7 of its 10 officers were known Communist Party members * * *." In emphasizing the danger from such cells, the admiral recounted the example of the Spanish Fleet in 1937:

* * * 700 officers were murdered by the Communist Party cells in the fleet because of the fact that the radio operators delivered the announcement of the Communist revolution to their comrades rather than to the responsible ship's officers, which permitted the revolutionists to commit the crimes, the officers not expecting it.[3]

Communist influence in the National Union of Marine Cooks and Stewards was such that the CIO expelled it in 1950.

The National Labor Relations Board was unable to wrest control over jobs from the group running the union hiring hall. Board case studies unfolded the many individual stories of violence and vilification wreaked upon courageous anti-Communists who dared to file charges against the union or undertake to defeat the entrenched forces in open elections.

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[1] HCUA hearings, "Communist Activities in the San Francisco Area," Dec. 2, 1953, p. 3175.
[2] *Ibid.*, p. 3177.
[3] Senate Internal Security Subcommittee, Report for 1954, Jan. 3, 1955, pp. 20–22.

The CIO expulsion of the West Coast International Longshoremen's Union and the trials of its leader, Harry Bridges, are matters of public record and knowledge. The HCUA had this to say about this union:

> This has 75,000 members. They have effective control of many ports in the U.S.A. and more than once have used it to paralyze shipping. Communist domination of this union in wartime could wreck the whole U.S. fighting power.[4]

Harry Bridges is still president of the West Coast Longshoremen's Union.

Neither the CIO expulsion of Communist unions nor the notoriety received from congressional exposure has deterred the Communist Party in its program of maritime union infiltration. Typically, the party revised its tactics to hold its ground.

The HCUA reported in 1954 that—

> the material from which to recruit was no longer available among the workers * * *. Therefore, the Communist Party directed its intellectuals and white-collar-worker members to leave their own chosen fields and to obtain employment in the basic industries. This the Communist Party did, starting in late 1948 and early 1949.[5]

The party went underground in 1948 and Director J. Edgar Hoover had this to say:

> No longer are Communist Party membership cards issued; maintenance of membership records are forbidden; contacts of rank-and-file members are limited from 3 to 5—the basic club unit. Most of the local headquarters have been discontinued and party records have been destroyed. No evening meetings are permitted in headquarters without staff members present. Conventions and large meetings are held to the absolute minimum. The use of the telephone and telegraph is avoided.[6]

The party today is back in the open due to Supreme Court decisions of the past several years. It is just as dedicated to the destruction of this country by force and violence as it ever was. There has been no change in its goal of world domination and control, nor has there been a lessening in its policies of infiltration.

The threat to our security by infiltration was clear and present when the Magnuson Act became law on August 9, 1950. This was the period of growing public concern over Communist action in Korea. Today we have another example of Communist aggression in Vietnam.

The Supreme Court held that the Magnuson Act gave the President no express authority to set up a personnel security screening program with respect to merchant vessels of the United States. In spelling out congressional intent, Senator Magnuson in sponsoring the bill before the Senate stated:

> This is not a national emergency measure; it is only a limited emergency measure to take care of the water front security of the Nation. * * * It would be impossible for destruction to come to any great port of the United States, of which there are many, as the result of a ship coming into port with an atomic bomb or with biological or other destructive agency, without some liaison ashore. This would give authority to the President to instruct the FBI, in cooperation with the Coast Guard, the Navy, or any other appropriate governmental agency, to go to our water fronts and pick out people who might be subversives or security risks to this country. * * *[7]

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[4] HCUA, "100 Things You Should Know About Communism," House Doc. 136, 82d Cong., 1st sess., p. 82.

[5] HCUA, "Colonization of America's Basic Industries by the Communist Party of the U.S.A.," Sept. 3, 1954, p. 13.

[6] *Ibid.*, p. 15.

[7] Cong. Record, vol. 96, part 8, p. 11321, July 28, 1950.

It seems to me that congressional intent was clear and that subversives or security risks were to be picked out from wherever they were found. But the Supreme Court said there was no express authority so I hope that congressional intent is made absolutely clear when the present bill is brought up on the floor of the House.

The Commission on Government Security determined that a port security program is necessary to protect United States shipping, ports, harbor, installations, and the Panama Canal from destruction and crippling damage by saboteurs and subversives. As a member of the staff of that Commission, I thoroughly agree with its findings and recommendations.

In my opinion, the danger to our country from international communism is greater today than ever before. The United States cannot coexist with communism because communism will not permit coexistence.

I sincerely hope that the bill discussed here today, H.R. 15626, is passed, and quickly.

Mr. TUCK. We thank you very much, Mr. Tracy.

I would like for the record to show that Mr. Tracy had a very long and distinguished record of public service to the country. For 13 years prior to his retirement in 1954, he was assistant to the Director of the FBI. He is presently a member of the strategy staff of the American Security Council.

He served as associate counsel in the Project Survey Division of the Commission on Government Security and that was 1956 and 1957. Prior to joining the FBI in 1933, he served with the Department of Labor Naturalization Service and the Veterans Administration.

I have no questions to ask of you but some of the other committee members may have some questions.

Mr. TRACY. I have an item that I worked on yesterday, but did not have time to put into my statement. I would like to suggest due to the decisions of the Supreme Court it has not been possible to force the Communist Party so far to register. However, the Supreme Court decision in the *Robel* case referred to it as a political association. Now, if the Republican Party and the Democratic Party have to file lists of contributions, I suggest this committee consider legislation to require contributors of money to Communist-action groups be made a matter of public record.

Probably that would open the party more to exposure to the American public.

Mr. ASHBROOK. Can I ask you whether or not they are trying to influence an election?

Mr. TRACY. If it is a political party it would try to influence elections.

Mr. ASHBROOK. Political parties do not have to report expenditures of money. That would be the Communist argument.

Mr. TRACY. I am only thinking of the contributors who support it, and contributions are listed.

Mr. Ashbrook. All of the money contributed to a party this year would be. Last year for its operation it was not listed if it was not trying to effect an election. Of course, the Communists argue they are not trying to effect particular elections.

Mr. TRACY. If it is a political party, I think it might be worth a try.

Mr. WATSON. If the chairman will permit me, I agree with you that it is not a political party and it is not a political affiliation, and my only comment is to thank you, Mr. Tracy; you have always been helpful to this committee.

As you well know, it is not the most popular committee in the world, because we are in the business of exposing subversive activity and you are never popular when you do that.

It looks to me since we have so many able men such as yourself and the American Security Council and we have the overwhelming majority of the Congress and the overwhelming majority of the American people, but we have difficulty a lot of times with the Federal agencies and especially the courts in trying to discharge our responsibilities.

So, we appreciate your help here in testifying today.

Mr. TRACY. I thank you, it is my pleasure.

STATEMENT OF LOYD WRIGHT, FORMER PRESIDENT, THE AMERICAN BAR ASSOCIATION

Mr. TRACY. Now, Mr. Chairman, you invited Loyd Wright, past president of the American Bar Association and Chairman of the Commission on Government Security , to be present but he was unable to be here.

He is attending a meeting in Chicago and will be en route back. He has asked me to deliver to you his letter transmitting his prepared statement that he asked be accepted as part of the hearing record in this proceeding.

Mr. TUCK. Unless there is objection, it is so ordered.

(Mr. Wright's statement follows:)

STATEMENT OF LOYD WRIGHT, FORMER PRESIDENT OF THE AMERICAN BAR ASSOCIATION

Mr. Chairman and Distinguished Members of the Committee:

I deeply appreciate the privilege and opportunity of commenting upon the committee's efforts by way of H.R. 15626 to shore up the havoc caused by the Supreme Court decisions in the field of preserving our national security and the effort to overcome technical objections raised by a majority of the Supreme Court of the United States which obviously run counter to the expressed purposes of Congress fulfilling its responsibility to preserve our Nation. It is my opinion that the bill clearly cures the alleged faults found by the Supreme Court to exist in the Subversive Activities Control Act of 1950.

It is regretful and alarming that this distinguished committee must devote so much of its time, efforts, and abilities to impress upon a majority of a vagrant Court that the Congress, in expressing the will of the people to preserve our national security, has acted within the commonsense interpretation of the Constitution and the Bill of Rights. I believe the proposed bill is constitutional and should be so held by any person worthy of being a Federal judge.

I have had the privilege of reading the statement that Stanley J. Tracy filed with the committee, and I wish except where in direct conflict herewith to be identifield therewith and by this reference adopt the same as my own. I have the temerity, Mr. Chairman and Gentlemen of the Committee, to make one or two suggestions that I believe will fortify the rights of the individuals involved and will tend to strengthen the national security.

On page 13, the fifth line, I believe that the disjunctive "or" should be used in lieu and instead of the conjunctive "and." It is conceivable that a saboteur, spy, or others of similar ilk would receive instructions or training without paying dues to any cell or unit wishing to use their disloyal tendencies to further the Communists' insidious program.

In reference to the provision at the top of page 19 providing that notice be given the applicant by regular first-class mail, I respectfully suggest that the delivery of mail is today so uncertain and sporadic that such notice should be given either by registered mail or certified mail.

On page 19, subparagraph (n), third line, I suggest that the words "have power to" and "and, in his discretion for good cause shown" should be stricken. A citizen charged with disloyalty is entitled to have available such witnesses as will be necessary and desirable to develop all the truth.

In a case, now pending on reviews in the courts, a faceless accusor refused for his own reasons to attend depositions or court hearing in the presence of the applicant. It is true that under present directive, the Secretary of Defense could have relieved him if he certified his appearance would be inimical to the national security. This was not done. The witness was referred to by the Defense Department as Witness "X" and refused to attend for his own reasons, unattached to the security of the Nation. He could not be subpenaed because the hearing, as well as the trial in the district court, was in Los Angeles and the witness in New York.

All efforts to have this man confront the applicant were refused by the Defense Department, and the applicant to this day does not know the name of his accuser. The district court held there was no evidence to sustain the charge of unworthiness on the part of the applicant to receive the clearance sought. As in the *Greene* case, the applicant, an American citizen of many years, lost his position and could not find employment elsewhere. If this faceless accuser had been subject to subpena the truth could have been developed and this law abiding citizen restored to his position. The record in this case is replete with similar arbitrary action on the part of those representing the Department of Defense.

It is common knowledge that enthusiastic lawyers representing the Government in these cases assume a superior attitude that makes them believe that they have the unrestricted right to determine the case, when their proper function is to develop the truth. I therefore respectfully urge that the power of subpena should be firm and fixed because while the present language vests in the President or his designee for such purposes the discretion to issue process, it is a well-known fact that the very people who violate the spirit of the fifth amendment in prosecuting an applicant are the persons upon whom the President must rely. This has and will continue to work injustices that should no be countenanced in a nation which professes to be run by the rule of the law.

It is now nearly 11 years since the Commission on Government Security rendered its report to the President and to the Congress. We recommend and I strongly urge the establishment of a Central Security Office and I have the temerity to suggest that the recommendation of the Commission on Government Security be carefully considered by this distinguished committee and implemented by legislation.

I hope and pray that the committee will adopt H.R. 15626 and that consideration be given to the suggestions herein contained.

There are certain thoughts that have occurred to me in considering this bill and I would like to express some of them with the hope that they will exercise a catalytic influence upon the committee.

Our country is beset by evil influences fully as dangerous as the Communist influence, if, indeed, most of them are not instigated directly or indirectly by agitation by the Communists in the first instance. We Americans seem disposed not to believe that there could be any influence to overthrow our Government, particularly if those advocating the overthrow have the temerity to forewarn us. It comes to mind the warning of the little Austrian paperhanger, who told the world what he was going to do in *Mein Kampf*, but the English and we paid no attention whatever to it. The results are well known to us all. The Communists have time and again expressed their intention to demoralize our people and obstruct our justice. It is my belief that recent events on the various campuses of our outstanding universities were instigated and initiated with the design on the part of the Communists to accomplish just what has been done. H. Rap Brown and Stokely Carmichael are permitted by the Justice Department to travel all over the world, particularly all over our country, advocating anarchy. This brings me to the point as to whether it would be desirable for the committee to recast definitions in the Subversive Activities Control Act of 1950 so that there will be included such organizations inimicable with the safety of the Nation such as "black power" and an inquiry made of the Justice Department to ascertain if the Attorney General is not familiar with section 3 of Article III of the Constitution and if so, make further inquiry as to why those irresponsible, and perhaps

even worse, individuals who are giving comfort and aid to our enemies are not brought before the bar of justice on the charge of treason. If we are to preserve our Nation, if we are to have domestic tranquility, we can no longer afford to act from fear or emotionalism, but must revive the rule of law under the Constitution and the Bill of Rights and see that those who transgress are properly brought before the bar of justice.

There is little doubt, in my mind at least, but that the advocacy of civil rights disobedience has permeated the minds of a great many of our people to the extent that they believe that there is such a thing as civil disobedience. Such, of course, is not the case. All disobedience of law at whatever level of Government, is criminal disobedience.

Great injustice has been done to a vast segment of our people by those who preach "civil disobedience," because they are not sufficiently able to understand that we are a nation and a government under the rule of law. This emotionalism has been built up into proportions that are startling and frightening and unless our public servants meet the challenge with firmness and dedication to the principles of our Constitution and Bill of Rights we will lose those rights for which our forefathers gave their all. Hence, it seems to me, that some thought should be given to classifying those who openly break the law in the same category as Communists, Fabian Socialists, black power advocates, and others who have by their own pronouncements advocated treason and who have given aid to our enemy in so doing.

I have heretofore suggested to this distinguished committee a matter that is a disgrace in the time and effort and money that is constantly being spent to try to repair the damage done by the irresponsibility of a majority of our Supreme Court. Since the Constitution expressly lodges in the Congress the sole authority to determine the appellate jurisdiction of the Supreme Court and since this distinguished committee has labored so long and faithfully in trying to cure cases that have been handed down by a majority of the Court from time to time in disregard of the expressed intentions of the Congress and hence the people, and since the majority of the Court have proven by their irascible conduct that they have no conception of that which Jefferson called the greatest facet of our form of government under the Constitution, to wit: the division of powers among the three departments of government, it would seem to me that the committee should seriously consider adding to H.R. 15626 a restriction upon the Supreme Court as to its appellate authority and require that no decision signed by less than three-fourths of the Court shall be effective or lawful or controlling unless the majority decision has the ratio of signatures above suggested. We have precedence for this ratio by reason of the machinery set up in the Constitution itself for amending the Constitution.

We can no longer close our eyes and be complacent about the fact that ideological decisions and predeliction of certain members of the Court have blinded the Court to its responsibility to interpret the law and to interpret the Constitution and Bill of Rights, giving full meaning to the words and provisions thereof as when written. And if I were privileged to write such a provision, I would further provide that no case heretofore handed down by the Court with less signatures than provided herein as being requisite to a valid determination, should constitute a precedent.

A law is not self-operating. The climate of a government often influences official acts of the judiciary, as well as administrative bodies. I append hereto a photostatic copy of a document that is inconceivable to me—a proposed precedent change in the Department of Defense.[1]

It is such a change from the concept of an open society as to be unbelievable. It constitutes an invasion of the rights of those engaged in our free enterprise system and, if continued, will cripple industry in protecting our national security.

Mr. Chairman, I appreciate the privilege of making these comments as an American citizen and as one who has devoted a great many years to the practice of law, who believes that our system of government and of law is the best ever conceived, and who is worried about the complacency of both the Congress and our people over the trends of events. I wish to compliment the committee wholeheartedly and express the hope that the committee and the Congress will pass H.R. 15626, and also express the hope that my feeble efforts in pointing out certain suggestions hereinabove maintained may stimulate some thoughts that will

[1] DoD Industrial Security Letter, Feb. 29, 1968. See appendix, part 2, pp. 1807–1813.

restore order to our land and assure transgressors of a proper penalty for their transgressions.

Respectfully submitted.

/s/ Loyd Wright
LOYD WRIGHT.

Mr. TUCK. Our next witness is Mr. J. Walter Yeagley, Assistant Attorney General, Department of Justice.

Thank you very much for coming down here.

STATEMENT OF J. WALTER YEAGLEY, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. TUCK. What is your position in the Attorney General's Office?

Mr. YEAGLEY. Mr. Chairman, I am in charge of the Internal Security Division of the Department of Justice.

Mr. TUCK. Do you have the sole responsibility and authority for the administration of that division?

Mr. YEAGLEY. Yes, sir, under the Attorney General.

Mr. TUCK. What actions have you taken against the Communist or Communist-front organizations since the passage of the amendments to the Subversive Activities Control Act signed into law on January 2?

Mr. YEAGLEY. As yet, no further petitions have been filed.

Mr. TUCK. Do you have any explanation to make to this committee why none have been filed?

Mr. YEAGLEY. I can explain what action we have taken.

Of course, the review of these organizations and the FBI reports concerning them have been a matter of regular business in our division over the years.

But last August we started a concentrated program of review of material involving Communist infiltration and domination of front organizations and reports involving Communist Party members.

We stepped up our liaison with the FBI. This continued throughout the fall and the ensuing months, particularly as it appeared that new legislation was going to be passed by the Congress.

Mr. TUCK. How about individuals?

Mr. YEAGLEY. We did the same with respect to individuals. We encountered some particularly difficult problems that have posed a real hurdle in some instances that may be resolved—I am not sure yet.

We have made a report to the Attorney General and furnished him some written material and memoranda involving some cases. He has not as yet completed his review apparently. However, he is familiar with them, and this is the present status of the result of that concentrated review.

Mr. TUCK. Do you have any plans for filing any petitions before the Subversive Activities Control Board any time soon?

Mr. YEAGLEY. This is a decision of the Attorney General. The petitions are all filed in the name of the Attorney General, and it will be up to him to advise us what action he thinks we should take.

Mr. TUCK. Do you have no authority in that matter?

Is it entirely in the hands of the Attorney General?

Mr. YEAGLEY. I have no authority to file petitions independently, no. I have authority to advise and consult with him.

Mr. WATSON. Mr. Chairman, may I interrupt at this point? What were your recommendations to the Attorney General as to whether or not he proceed with anything against these people?

Mr. YEAGLEY. I would have to beg off on that. I don't like to beg off in answering questions——

Mr. TUCK. I can't hear the witness.

Mr. YEAGLEY. I think I have to beg off on an answer to that question. I don't like to refuse to answer questions of a congressional committee, but when I make recommendations to the Attorney General, I feel he is the one who should release such information or recommendations if he chooses to do so.

I don't think I should say what my position was before he takes a stand himself. I don't think it is fair and I don't think it is good business. I must apologize for not answering any further, but I don't think I should.

Mr. WATSON. You realize the importance of this particular matter because under the legislation this Board is going to go out of existence if no proceedings are filed within 1 year.

I don't want to preempt your questions, Mr. Chairman, but you have it within your power this time to abolish this Board and what we are trying to do, and at least I am concerned with whether you have even recommended any proceedings.

Mr. YEAGLEY. I appreciate your interest. That is why we have stepped up our program and have assigned extra men to review these cases.

Mr. WATSON. Are you aware that back during proceedings here in hearings some of these people admitted publicly and in written statements that they were Communists?

Mr. YEAGLEY. Yes, I know there have been a good many people over the years who have either admitted or held themselves out to be members of the Communist Party.

Mr. WATSON. Yet you are not at liberty to indicate whether you have recommended proceedings against those individuals?

Mr. YEAGLEY. No, I don't feel I should at this time. I think the Attorney General can. I don't have any objection if he does.

Mr. TUCK. Mr. Culver?

Mr. CULVER. Mr. Yeagley, in 1950 when the legislation was enacted by the Congress establishing the Subversive Activities Control Board, it was the combined recommendation to the President, then President Truman, of all United States security divisions uniformly that this legislation would not be useful in the effort understandably to contain the activities of internal subversives in the United States and, on the contrary, would hinder and hamper, rather than help, their efforts and responsibilities in that regard.

On that basis, President Truman vetoed that legislation. The Congress passed the legislation over his veto as you are very much aware.

Now, President Truman in his veto message, I think, had some very prophetic observations about the fate and the future of the Subversive Activities Control Board, and it seems to me the past 18 years we have seen the Board unsuccessfully operate and fail to register one Communist and in fact be embroiled in the constitutional and legal thicket which President Truman predicted.

Now, my question to you is: During the past 18 years, has the existence of that Board been of assistance to you?

Has it proven itself to be valuable?

Has it served to strengthen the effectiveness of your own Department in its responsibilities, and very valuable and important and crucial ones they are, in doing what we all seek to do, and that is to defend the national security interests with the maximum recognition of the first amendment values of our society?

Mr. YEAGLEY. Mr. Congressman, it is my personal opinion that the activities carried on and the petitions filed——

Mr. TUCK. Would you move the mike closer. I can't hear you.

Mr. YEAGLEY. Mr. Congressman, it is my personal view that it has been useful. We filed, of course, the original petition against the party in 1950. There was over a year of taking evidence, not every day, but most days, and there was a voluminous amount of evidence that was taken in regard to the nature and objectives and purposes of the Communist Party.

I think this in and of itself was very illuminating and very educational to a great many Americans, as compared to information that they might get by other means or other sources about the movement.

This was information under oath. It was documentary information. It was as accurate as it could be under conditions of a Board hearing. I think that was useful.

I think the findings of the Board, based on that evidence as to the nature of the Communist Party at that time and its control by the Soviet Union, was useful.

After the Supreme Court's affirmance of the final order in 1961, and before that as a matter of fact, we filed a number of petitions on alleged front organizations.

I think there were 23 in all. Most of those went to hearing. Those organizations for the most part were reasonably large and many of them fairly well-known organizations.

I think the testimony and documents of those hearings were illuminating and I think they shed light on the basic operations and the internal operations of some of those organizations.

That was useful information and that was the type of thing that the American people at that time were entitled to have.

I think the country was under a little more stress and strain from the cold war at that time. We had the attack by the Communists in Korea in 1950, and following the Korean war that disturbed many Americans and cost many American lives, we had the shelling of Matsu and Quemoy Islands and the tension created there by the Communists.

We had almost constant tension arising over the Berlin corridor that many people feared was bound to lead to an early third world war.

These tensions were serious, and I think it was useful at that time to get factual information out under oath and with documentation as to the nature of the Communist influence here.

Mr. CULVER. Do you think the American people could be aware and sensitive to these activities in the absence of the Subversive Activities Control Board?

Mr. YEAGLEY. Yes. I am just saying to a lesser extent and with fewer facts to fall back on.

Mr. CULVER. What about the disclosure of security information? I recall in the President's veto message this was one of the concerns that intelligence organizations charged with security responsibilities within our Government gave grave concern to, that this legislation within the Department of Defense with regard to designation of defense facilities would force, in order to comply with the legislation, the disclosure and divulgence of sources of intelligence-gathering information which were extremely valuable in order for you to perform properly your responsibilities.

Has that proven to be the case? Has it resulted in a compromise of your security files which we all wish to preserve and maintain?

Mr. YEAGLEY. This is an important problem and it is a practical and realistic problem that we live with in all of our cases, whether it is before the Board or whether they are espionage cases or other cases in the courts.

I am sure it is one the Attorney General is going to have to keep in mind in deciding about these petitions that may be coming up in the future.

If in a given case the FBI or the Government feels that certain informants cannot be disclosed for the purpose of testifying in a given case, in other words, that their continued service as informants is more valuable than bringing up a certain case, this is a difficult decision to be made, but very likely it will be that that particular case will not be filed.

Mr. CULVER. Then in your judgment, the activities and services of the Subversive Activities Control Board in the past 18 years has served to strengthen the national security interests of the United States consistent with the first amendment values?

Mr. YEAGLEY. That is my opinion, and I think beyond that it has been very detrimental to the operations of the Communist Party.

I think it may have been more detrimental to the party than it was helpful to the Government because they were really bothered by the provisions of the act.

They spent a great deal of time and money, not just in court but politically, resisting the provisions of the act and propagandizing against it.

I think they diverted an undue amount of time, attention, and money to fighting this law and conceivably might have been much more effective had they continued on their own road paying little attention to the act.

But this is not what they did. I think it was very detrimental to the operation of the party.

I think I should also observe, although there are many reasons involved as you know, the party membership has fallen drastically all through this period.

Mr. WATSON. Purposefully so. Now their modus operandi is not to enlist members in the party per se, but to have front organizations. Isn't that a basic principle under which they are operating now?

Mr. YEAGLEY. They have always believed in fronts, but I can't say that they purposely reduced the party membership. I am talking in terms of tens of thousands of members. I am talking in terms of 90 percent of the members.

Mr. CULVER. Do you think it could have been a decision on behalf of the party, which I am sure they gave great thought to, whether in terms of political and tactical propaganda it would be well to dramatize the existence of this legislation and suggest the United States society did not represent to itself and the world what it professed to?

Mr. YEAGLEY. Yes, I believe that is part of it.

Mr. CULVER. You believe that is part of it?

Mr. YEAGLEY. Yes, I do believe that is part of it.

Mr. WATSON. I yielded to you, but I would like to get back to my line of questioning.

Mr. CULVER. What about the time and money of the Justice Department in terms of the litigation involved in all the constitutional cases and the appeals that have resulted from the Subversive Activities Control Board?

The very existence has cost the taxpayers $5 million in the last 18 years.

This does not take into consideration other than the actual appropriations by the Congress for the Board's existence. When you speak of time and money, with those people like yourself charged with law enforcement responsibilities and particularly security responsibilities, what has been the calculated estimated time and cost of Justice Department legal counsel and FBI efforts directly earmarked to implement and defend the Subversive Activities Control Board legislation?

Could you give us an estimate on that?

Mr. YEAGLEY. I could, but I don't know how well I could do right now because I have not tried to compile such information or such figures.

I can mention a few facts that come to mind that may have a bearing on this, in which you may be interested.

As I recall, the peak personnel ceiling level of the division was roughly 1957, and maybe in 1958 it may have been the same, at which time the budget authorizations for lawyer positions was 102.

I think the lawyer personnel probably was running around 94 at the time, maybe 92. Since that time, we have cut down substantially, so the ceiling now is, I think, around 56.

Mr. TUCK. Do you consider that time and money well spent in fighting communism in this country?

Mr. YEAGLEY. Yes, I certainly do.

Mr. CULVER. Do you think you could fight communism more effectively if those men involved in this particular work were actually engaged directly in the efforts of your Department aimed at this and not involved in the exercise of working around this particular legislation?

Mr. YEAGLEY. As part of your question, I would like to mention that most of our lawyers at that time and even now are not dealing with matters under this act. Most of them at that time were working on Smith Act prosecutions. We also have lawyers working on the Foreign Agents Registration Act and we have the Criminal Section which deals with violations of the Neutrality Act, espionage, trading with the enemy, and things of that type.

So, part of the personnel, whatever the number may be, would be assigned to one of the particular sections that works on these matters.

As to your other question, the balance of your question, it is rather speculative for me to answer that. It would be my feeling again as I indicated before, I think, that the proceedings under this law have been useful in the manner in which I have described, and you don't quite get that type of disclosure in espionage cases or neutrality cases or trading with the enemy.

It is not quite the same.

Mr. TUCK. The Subversive Activities Control Board is a part of our judicial body, is it not, and it has no powers to institute proceedings on its own.

Mr. YEAGLEY. I am sorry, I did not understand your question.

Mr. TUCK. I said the SACB is a quasi-judicial body and it has no powers to institute proceedings of its own. That is right, is it not?

Mr. YEAGLEY. The petitions have been filed by the Attorney General—do you mean the Board can file petitions?

Mr. TUCK. I mean the Board for its work and existence is dependent upon the activity of the Attorney General or the divisions of the Attorney General's office in filing proceedings before that Board?

Mr. YEAGLEY. That is correct.

Mr. TUCK. Whatever failings or shortcomings there may have been or whatever criticism that was made against the SACB, and there was much, for its failure to do any work was really the failure of the Attorney General's office rather than the Board; isn't that correct?

Mr. YEAGLEY. The only petitions they have are the ones filed by the Department of Justice. They cannot file petitions on their own.

Mr. TUCK. They can only hear petitions that are filed. No one can file petitions except the Attorney General; is that right?

Mr. YEAGLEY. That is correct.

Mr. TUCK. I am somewhat astonished in light of all of the conditions of unrest going on in the country now that you would be unwilling to tell this committee that you recommended to the Attorney General of the United States either that these proceedings be inaugurated, or that they not be.

Mr. YEAGLEY. I may be old fashioned. I have seen and heard of other Government employees who tell privately what they recommended to their boss. I don't think it is the way to play the game. I am sorry.

Mr. CULVER. Mr. Yeagley, you were also on the Attorney General's staff during the administration of the Republican Party as well, as I recall.

Mr. YEAGLEY. Yes, I was.

Mr. CULVER. I think the thing that interests me, and perhaps it may be misleading based on our present discussions, but has it not been true generally throughout the course of the last 18 years there has not been a large number of petitions ever initiated by the Attorney General to the Board.

Mr. YEAGLEY. Twenty-three front organizations and forty-four membership petitions were more or less scattered. They were not all filed at one time.

Mr. CULVER. It has generally been a light system.

Mr. YEAGLEY. Yes. That is right.

Mr. WATSON. You filed 23 organizational and 44 individual, I understand, but since the amendments which we passed and were signed

by the President on January 2 of this year, there have been none; isn't that correct?

Mr. YEAGLEY. That is correct.

Mr. WATSON. Now why the sudden change in philosophy? It is not a matter of whether the Department wishes to do this—I am not critical of you—but I am speaking of the Department. It is not a matter of whether you wish to disclose these organizations and membership.

You know it is a matter of law and this act says, "Disclosure of Communist organizations and of the members of Communist-action organizations as provided in this Act is essential to the protection of the national welfare."

That is the law of the land passed by the Congress and signed by the President.

It is not optional with anyone as to whether or not disclosure is good or bad. If we want to change this law, anyone can introduce a bill to change it. This is the law of the land.

I fail to understand why, in view of the good job you have done before, the SACB cannot do a thing without petitions filed by the Department of Justice.

You have been the longtime head of this Department. Why haven't we had any petitions filed? That is a simple question and I believe this committee is entitled to an answer since this is the law of the land as passed by the Congress and signed by the President.

Mr. YEAGLEY. I will try to answer it. I don't think the answer is as simple as the question.

First of all, it is not easy to routinely produce FBI informants as witnesses and thereby destroy the coverage of the area they are covering. Sometimes there are other factors militating against any particular informant becoming a witness. In each case, on a front organization, we must maintain a burden of showing that the organization is dominated and controlled by the Communist Party.

Mr. WATSON. That is no new burden. You had that in prior years, prior to the advent of this act.

Mr. YEAGLEY. That is right, and the Communist Party influence has diminished.

Mr. WATSON. Your position now is that the Communist Party influence has diminished in this country? Is that your position?

Mr. YEAGLEY. I am trying to talk now about facts. We have to produce witnesses that the party in fact dominates and controls the organization. The *National Council* case that came down a few years ago defined that burden of proof in a more strict manner than we had interpreted it, which makes a stronger burden on us in our opinion.

When a party or organization declines in membership, from say 80,000 to well, less than 10 percent of that, the extent of its influence in organizations cannot, by any stretch of the imagination, be as influential or as widespread as it had been before.

What I am trying to say is that when you combine the reduced influence of the Communist Party in these organizations with our problem of producing FBI informants as witnesses it is not an easy matter.

Mr. CULVER. Mr. Yeagley, isn't this exactly what President Truman predicted and isn't this exactly the reason you had the uniform coun-

sel of all security agencies within the United States Government make the same recommendation that this would pose problems of compromising evidence which would not be in the national security interest of the country?

That is the reason you are hamstrung right now, is it not, and it would not be in the national security interest to bring forward informants and bring forward FBI sources which would publicly compromise this terribly important information?

Under those circumstances, I raise the very serious question of which disclosure is more important in the national security interest. Is it the forced disclosure of informants and intelligence information which is of crucial importance in this vital area?

Does it override the importance and value which you suggest is available by way of the public disclosure of the nature and operation of the Communist conspiracy in this country?

Mr. YEAGLEY. The Attorney General said a short time ago that he will enforce this law as he recognizes that he is bound to enforce all of the laws for which he is responsible. If he feels that he has adequate, usable evidence to file an important case, I am convinced that he will file such a case.

Mr. CULVER. It would not be then in the national security interest, for example, given our present example with the *DuBois* case, regardless of how important you view the disclosure value to the United States public of the nature of the Communist Party, to perhaps come forward with wiretapped evidence of that kind which would serve to compromise your whole operation.

Mr. YEAGLEY. This is another problem of the last year or two that comes to us in an entirely different context than it was in before, partly because of the recent court decisions concerning electronic surveillance.

As you know, the executive branch over the years has believed it has the right and duty to resort to electronic surveillances in national security cases which are of sufficient importance to warrant it.

Obviously, if there are electronic surveillances as has been testified to by the Attorney General and Mr. Hoover, these are facts of life which we must deal with in light of what the law is, and they do have a bearing on our entire operation. We have to find out in every potential case exactly the nature of our evidence and whether it is evidence we can use.

Mr. TUCK. Mr. Yeagley, I understand you have the same view that I do, that it is the duty of the Attorney General to enforce the laws passed by the Congress whether it is wise or unwise as long as those laws remain on the statute books.

Mr. YEAGLEY. Yes, sir, that is our position.

Mr. WATSON. If the chairman will yield, I understand that my friend and colleague's concern about maybe if you pursue this matter with a petition before the SACB that you might reveal the identity of your informant.

Is it not a fact that one Julia C. Brown and Lola Belle Holmes have already identified before this committee—and they have been already publicly identified as informants—Brown 100 members and Holmes 75 members, and you have already used these two informants for the 44 petitions that you brought earlier?

Why did you not pursue the additional ones that these have identified? There is no question they have already been revealed to the public as informants.

Mr. YEAGLEY. I am not familiar with the exact numbers that you referred to, but I am sure that your information is substantially true.

I would make two points: One is when they identify so-and-so as a member of the Communist Party, we must go beyond that in preparing a petition. We must find out how long they knew this, how they knew it, under what circumstances, did it come to them by direct evidence or hearsay, which is often the case within the party.

We must make sure that we feel we have two witnesses to the same membership, not merely one witness to each membership, and I think that has been our position throughout in filing these cases, that we have two witnesses testify to the same person's membership.

The other factor that may have been true here, although I don't remember, we have to show that the person was known by the witness to be a member of the party at the time the petition was filed.

We can't get an order against a person who resigned before the petition was filed. Consequently, if an informant has been out of the party for 9 months or longer or some similar period of time, he ordinarily cannot testify to current party membership.

Mr. WATSON. Is it not your responsibility to identify them as a member or a former member of the Communist Party?

If you follow the position you are taking there now, you would absolutely never proceed against anyone because if you get the information today, by the time you bring your petition tomorrow he could be out of the party and you could not swear that he was still a member of the party.

Is it not your responsibility to bring the petition upon the basis that they are or were formerly a member of the Communist Party? And in these instances these people identified them as members of the Communist Party, and you proceeded in a number of cases on the basis of these informants' testimony, direct testimony, not hearsay, that they were members of the Communist Party. Why have you not proceeded in the other instances?

Mr. YEAGLEY. For the reasons I have stated. We must have current evidence, two witnesses as to the same member that they knew as of the date of the filing of the petition he was a member of the party.

If a person leaves the party and identifies others 9 months later, that would not be current evidence. They can only identify them as of the time they knew them in the party.

Mr. WATSON. In other words, now your regulation is that you require two people to identify a member?

Mr. YEAGLEY. I think we have always followed that policy.

Mr. WATSON. In other words, you have to have two informants in every case?

Mr. YEAGLEY. Yes, or corroborating evidence. If we can corroborate it with documentary evidence or some other way, plus one witness, that is all right.

Mr. WATSON. Are you saying that 100 identified by Julia Brown and 75 by Holmes, are you telling this committee that it was not justifiable that you proceed to file a petition to identify these people?

Mr. YEAGLEY. No, I don't claim that we are that precise or perfect by any manner or means. We may have missed some. All I am saying is very likely the answer to your question is that we did not have two witnesses to any one person's membership and if we did that at the time we had it, it was no longer current and could not be updated to the time of filing the petition.

Mr. WATSON. I am still at a loss and I conclude with this because it seems we are not going to get the answer. I am amazed that you could bring these cases earlier and you have not been able to bring one single case since the passage of this amendment and the signing of it by the President on January 2.

That is the thing that disturbs me. You did a good job earlier, and I am just amazed as to why we cannot continue it and you have the responsibility under the law whether we agree with it or not. It is essential to disclose the members of the Communist Party for the protection of the national welfare. That is the law.

Mr. CULVER. Mr. Yeagley, I am interested in this question with regard to the proliferation of Communist-front organizations and, as suggested by Mr. Watson, the diminution in the actual numbers in the Communist Party relatively in the United States today and whether this has been brought about because of their increased activities and front action.

As I recall in President Truman's veto message, he predicted this legislation would have this consequence, the actual enactment of the Internal Security Act, at least to the extent that the SACB would operate, because once a petition was filed and a hearing called by a Board, certainly any Communists behind these activities could just change the name of these front organizations and initiate a new group under a new label and go right ahead, and it would only serve to stimulate and make more sophisticated the nature of their operation internally in this country.

It seems to me that we have seen this great outpouring of names of groups and organizations and to the average American I can see where it represents a bewildering kaleidoscope of subversive activity, but I wonder to what extent that has been brought about as a result of the creation of this Board and it stimulated this development and in fact has brought about the very danger it seeks to oppose.

Mr. YEAGLEY. I don't know that I agree with your assumptions. I am afraid possibly I don't.

Mr. CULVER. Have you seen any evidence to suggest that once these groups are earmarked as being of a subversive nature and so on, they go underground and set up another group under another name?

Mr. YEAGLEY. The FBI has had pretty good coverage of the Communist Party, Mr. Congressman.

Mr. CULVER. I hope and pray they do. I have no doubt that they are extremely effective and I hope and pray they are and continue to be with regard to the problem of internal subversion. My only question with regard to you is the extent to which the very existence of this legislation has served to make more difficult this whole problem of public education and awareness concerning those particular organizations or groups of the type and nature which the average American does not wish to be associated with.

That is my question.

Mr. YEAGLEY. I am sure that there must be Communists underground that are not identified. That is the nature of their operation worldwide. But as far as I know, from information I have had, I would have to repeat that I believe that, all in all, the proceedings filed before the Board and the hearings held have been useful and outweigh the detriments.

There are some adverse factors admittedly.

Mr. CULVER. I was interested in the educational value of the Subversive Activities Control Board. When considering this legislation in December I don't think outside the immediate membership of this committee that there were probably five Members of the entire Congress, out of a total membership of 435, who had ever even heard of the SACB, and I think in the Senate of the United States it is equally true.

As far as general awareness of their activities, even among a sophisticated and well-informed American public, I think that is a very remote speculation. It is certainly true that the methods and nature and operation of the Communist Party are extremely important to be known, and the fact that they operate fronts in their approaches. However, being out in the marketplace a little bit myself and not having spent my whole life in a very important role as you now occupy, I wonder if you are not perhaps overestimating the general level of enlightenment among the public as a result of the 18-year activity of the SACB.

Mr. YEAGLEY. That may be. I can't claim I am always right. It is just a matter of opinion.

I might point out one other factor for what it is worth: There have been, and probably always will be, claims on the part of certain people that so-and-so is a Communist.

Sometimes it is rightfully so and sometimes not. Unfortunately, there may have been some claims made that were not in such good faith.

When we file a petition we use the word Communist as referring only to one who is an actual member of the CPUSA, that is Communist with a capital "C." To prove a person is a Communist with a capital "C" it is not sufficient to prove that he is a Marxist, or even a Trotskyite, or some sort of follower of Marx or Lenin; even a person who said, "I believe in and support the CPUSA" is not necessarily a member of the Communist Party within the meaning of this act. We deal with precise terms when we are dealing with sworn evidence and documents to prove membership.

I would hope to some extent official proceedings with technical treatment of the terminology used regarding membership in the Communist Party serves to minimize the making of loose claims of other people and organizations as being Communist with a small "c."

Mr. TUCK. You are familiar with the provisions of the amendments recently passed, are you not?

Mr. YEAGLEY. Yes, sir, I am.

Mr. TUCK. Under those provisions, could you not call in one of these Communists and get information from him as to these activities?

Mr. YEAGLEY. Yes.

Mr. TUCK. For instance, you could call in Gus Hall. You may not be able to prosecute him as a Communist, but you could prosecute him for refusing to answer questions; couldn't you?

Mr. YEAGLEY. Yes, we could.

Mr. WATSON. The act signed by the President early this year for you to file these petitions and prove your case before the SACB, does it not actually make it easier?

Mr. YEAGLEY. I am not so sure, but I would like to comment on this.

We have been talking to our lawyers about this and we have worked on what the immunity provision offers. Our experience has been that the person will refuse to become a witness—our experience with Communist Party members, when we have given them immunity in the past under other laws is that they have not testified.

Mr. TUCK. We have asked you a lot of questions here this morning. I know that you have a formal statement and I think the time has come probably for us to permit you to make that formal statement.

We will recognize you for that purpose.

Mr. YEAGLEY. I am here today in response to the request of the chairman for the views of the Justice Department with respect to H.R. 15626.

Generally speaking, we are in agreement with the bill's objective to provide a statutory basis for the safeguarding of classified information that must be released to industry, even though we do not suggest there is a compelling need for such legislation in view of the satisfactory operation of the present industrial personnel security program under Executive Order 10865.

In the *United States* v. *Robel*, 389 U.S. 258, the Court said that the Government has the power to safeguard its vital interests and that Congress has the power under narrowly drawn legislation to keep subversives from sensitive positions in defense facilities.

We do not believe, however, that the programs authorized here should be made a part of the Subversive Activities Control Act. That law is limited to the activities of the Soviet-controlled Communist movement in the United States. As the bill recognizes, in proposed section 5A(d), not all subversives are Communists, nor do they all have Communist ties or affiliations. As you well know, Peking Communists and Castro Communists do not come within the act, nor do the various Communist splinter groups still active on the American scene. And, of course, other non-Communist subversives such as anarchists do not come under the act. We believe that amendments to the Subversive Activities Control Act should be limited to the purposes originally contemplated by that act and that legislation such as this should be kept separate from it.

H.R. 15626 is drafted in terms of barring subversives from all employment in defense facilities, even if they are privately owned. The Court in *Robel* struck down legislation which imposed a criminal penalty on Communists employed in defense facilities, but that law was not specifically restricted to employees in sensitive positions.

This bill would authorize the President to deny employment in any defense facility to any person who has the opportunity, by reason of his employment in or access to such facility, to commit subversive acts such as sabotage or espionage. Since the Government is not the employer I have some reservation about an authorization which gives the

Government the right to deny employment even though it be in private industry. I would prefer language authorizing a denial of access to particular sensitive positions in defense facilities.

In view of the decision of the Supreme Court in *Robel*, it is clear that a statute designed to make employment of Communists in defense facilities unlawful must require more than a showing that an employed member of that class knew the facility had been designated under the act and that the organization had been found to be a Communist organization. Court decisions indicate that an individual cannot be held criminally liable for engaging in such employment without also some showing at least that he is a current active member who participates with knowledge of the organization's illegal purposes. Section 1 (2), page 2, of the bill would be subject to the same objections the Court found to section 5 of the Internal Security Act in the *Robel* case.

The Supreme Court has indicated that legislation which has an impact on first amendment rights must be as narrowly drawn as possible to achieve the legitimate governmental function desired by the Congress. In this instance the governmental interest is to deny access to classified defense information and to sensitive areas of defense facilities to potential spies and saboteurs or to persons who are otherwise untrustworthy. This purpose, we believe, can be accomplished best through a personnel security screening program related to sensitive positions instead of by means of a statute such as that involved in *Robel*, which made a criminal offense of the status of holding a job in a defense facility while concurrently being a member of a Communist organization. Although a screening program places a much heavier administrative burden on the Government than the *Robel*-type criminal statute, it can be more "narrowly drawn" and therefore would have a better chance of withstanding constitutional attack.

If defense facilities are to be protected, I would favor the approach of a screening program authorization which would establish a procedure for keeping persons like those described in section 1(4) of the bill out of sensitive positions in defense facilities. However, we would defer to the views of the Department of Defense as to the necessity of such legislation.

The bill provides in section 5A(d) authority to permit a determination of the extent and the nature of an individual's subversive memberships, associations, and activities. However, 5A(d)(1)(C) of the bill authorizes consideration of memberships and affiliations in organizations whose subversive character is not to be arrived at under the strict due process procedures required by the courts for such determinations. Accordingly, we recommend the deletion of that portion of the bill.

Similarly we believe section 5A(e) should be deleted for presuming under certain circumstances the existence of probable cause for the characterization of other organizations and individuals.

Section 5A(h) generally codifies the provisions of section V.B. of DoD Industrial Personnel Security Directive and seems to permit the investigator who propounds the questions to be the final arbiter of the relevancy of each question. Provisions should be made for a ruling on any objections to relevancy by a hearing officer or board prior to any adverse action under this section for failure to respond.

We believe it necessary to strike the period at the end of the first sentence of subsection (q) of section 5A of the bill, which subsection defines "classified information," and to add the words "pursuant to law or Executive order." This would make the definition less broad by limiting its scope to information officially classified pursuant to the detailed criteria of Executive Order No. 10501, or as otherwise expressly provided by statute.

In section 1(3) of the bill, page 3, we suggest the insertion of the words "which he determines" after the word "subversion" on line 15 so as to ease the burden of proof.

We recommend omitting from section 5A(d), page 6, lines 1 and 2, the following language, "with any Communist, Marxist, Fascist, totalitarian, or subversive organization, and such other associations" since at least one of those adjectives may be deemed vague and appropriate criteria are later set forth beginning at line 8. Also in regard to lines 4, 5, and 6 we believe the inquiries should be related to the ultimate finding. We suggest this part of the bill be changed to read as follows beginning on line 24, page 5:

to authorize by regulation reasonable inquiries directed to an individual regarding his memberships, affiliations, associations, beliefs, habits, and activities, past or present, which are relevant or material to a determination whether his holding of a sensitive position in a defense facility or his access to classified information is clearly consistent with the national interest, including but not limited to consideration of such criteria and inquires of one or more of the following categories:

You will note this suggestion uses the criteria "clearly consistent with the national interest" instead of the criteria "national defense or security interests" used in the bill, page 5, lines 8 and 9. We favor continuing the criteria of the Executive order which has not as yet been questioned.

We would also change the phrase in subsection (f)(3) of section 5A, page 12, which reads, "publicly designated by the Attorney General, the Director of the Federal Bureau of Investigation, or any Federal agency as totalitarian, Fascist, Communist, or subversive," to read, "designated by the Attorney General pursuant to law or Executive order," to conform with proposed section 5A(d)(1)(B).

The provisions of subsection 5A(k), line 18, page 16, to line 17, page 17, establish procedures that differ from present procedures under E.O. 10865. We prefer the provisions of the Executive order to meet requirements of due process. Accordingly, after the word "applicant" in line 18, page 16, we would delete all of the remainder of subsection (k) of proposed section 5A except for lines 18 through 20 on page 17 and substitute, instead, the present provisions of sections 4 and 5 of Executive Order No. 10865. This would continue in effect the present safeguards which provide that before an adverse determination is made against an applicant in a proceeding in which he is deprived of either the opportunity to cross-examine persons or to inspect classified documentary evidence, that (1) the reliability of the information be assessed, (2) a determination be made, in certain circumstances, that failure to receive such information would be harmful to the national security, (3) appropriate consideration be accorded to the fact that the applicant did not have the opportunity of cross-examination, and (4) where full confrontation is not given an adverse determination can

be made only by the head of the Department based upon his personal review of the case.

I believe subsection (1) of proposed section 5A should be changed to empower the head of a Department, rather than the President, to personally make the determinations required by the subsection when, in the interests of national security, employment or access is to be summarily denied. A Department head must personally make these determinations now pursuant to section 9 of Executive Order No. 10865, and I see no reason why this procedure should be altered.

Section 2 of the bill, in amending the Magnuson Act, appears to provide the type of authorization found lacking by the Supreme Court in the case of *Schneider* v. *Smith* in striking down the then Merchant Seamen's screening program conducted by the Coast Guard.[1] Of course, to the extent that amended section 5A would be incorporated into this program we would reiterate our previous comments on that part of the bill.

Mr. TUCK. We thank you very much for coming here today and for your statement. You have made some very pertinent suggestions. I know our able counsel will be glad to discuss these proposals with you with a view to incorporating as many of them as may be practical.

I may say that the distinguished chairman of this committee, Representative Willis, who unfortunately could not be here with us today, is as concerned as are some other members of the committee, including myself, about the failure of the Justice Department to proceed in these cases.

We just do not understand why they have not.

Mr. Yeagley, I want the record to show that close to 4 months have already passed since the enactment of P.L. 90–237, approved by the President of the United States on January 2, 1968.

By its terms, that law imposes a positive duty upon the Attorney General to initiate proceedings before the SACB for the identification and determination of Communist organizations and members of Communist-action organizations.

In adopting P.L. 90–237, it was undoubtedly the intent and expectation of the Congress that this law would be duly—and, I might add, vigorously enforced.

It is clear from official pronouncements emanating from responsible sources, including the Department of Justice, that there is reason to believe that there are a number of organizations against which the Attorney General may proceed as required by the provisions of the act.

It also appears clear that there presently exist within the United States in excess of 10,000 members of the Moscow-controlled Communist Party—an organization which in 1961, following a decision of the United States Supreme Court, was finally determined to be a Communist-action organization.

Nevertheless, and despite the law and the evidence, not one single proceeding has been instituted by the Attorney General under the act.

While we recognize that proceedings against organizations may require some greater degree of preparation, the proceedings against individuals for determination of membership in the Communist Party

[1] "Security of Vessels and Waterfront Facilities," Mar. 1, 1967. See appendix, part 2, pp. 1739–1806.

are proceedings which, it seems to me, present one simple issue and thus are almost wholly devoid of any complexity.

In view of the serious threat to our national security and the obstruction to the orderly operation of our free institutions presented by Communists and Communist organizations at home and abroad, the Congress and the people of the United States are justifiably concerned when any delinquencies appear in the enforcement of laws designed to control Communist operations.

Increasing incidents of public disorder of a most serious character to which Communist organizations have materially contributed, as the evidence shows, together with an apparent indisposition on the part of certain officials of Government to deal with them vigorously and effectively, has resulted in widespread public anxiety.

Surely this public concern, reflected by the Congress, should be recognized by the Attorney General.

We can sit here till doomsday, struggling to improve our laws and to legislate, but laws will be but as a tinkling cymbal and a reproach if they are not enforced.

You in the executive branch have the duty to enforce the law.

I hope that the people will make themselves heard on this subject. The people of America are greatly concerned at this time as never before.

The fact is that these undoubtedly vicious groups are touring the country disrupting Government offices and throwing a monkey wrench into the machinery of Government. Unless it is stopped by the present Government of the United States, we will have nothing more than the hollow shell of an organization.

I am not accusing the Attorney General as the only one being guilty. The Congress and the executive departments are equally guilty. But I say it is a serious situation. The people of this country look to Congress, they look to us to protect them, and their little helpless children that are playing innocently around the firesides of this Nation are looking to us to protect them.

I think something has to be done and I think it is up to the Attorney General and the Justice Department to show the people we intend to drive these Communists out and put them out of business.

I may say also the concern of the chairman of this committee, who is not here today, is of such importance that I have reason to believe that he will call on the Attorney General rather promptly to let this committee know, as we have a right to know as an arm of the Congress of the United States and one that presented this bill to the Congress, what you expect to do.

I hope that you won't consider anything I have said personally. You made a fine witness.

I am a member of the Judiciary Committee of the Congress. I have had occasion to meet the Attorney General before and since he entered into that office and I have known his very distinguished father for many years.

It is nothing personal. I am a member of the Virginia Democratic Party, and I love my country and I believe the overwhelming majority of the people of this country believe it and I believe they are determined to let the folks know now that we are not going to stand for any of this softness any longer.

The idea of bringing all these people in here, these worthless people, to trample all over the Nation's Capital who will cost millions of dollars in expenses to clean up after them—who is going to water those mules and feed them?

I am a country boy. I know mules have to be cleaned and fed. I think the time has come when we must give consideration to these matters and stop these people.

Now I want to say another thing: I hope I am not "speechifying" too long. I come from a State where I was chief executive of that State for a time, where the precious and immortal Virginia Bill of Rights was rendered, the principal provisions of which were incorporated into the Constitution of the United States and then into the constitutions for the other States of the American union.

I believe in freedom of speech and I believe in freedom of assembly and I believe people have a right to petition their Government, but they don't have their own right of way. They have no such rights to exercise that power of assembly and powers to petition if by doing so they trample upon the rights of other people.

So, I think some method should be devised to stop them. For my part, I am willing to vote for any constitutional law that will do so.

I have talked undoubtedly too long.

I thank you very much.

Mr. WATSON. Mr. Chairman, I have one or two questions.

I certainly concur in the feeling of the chairman that American citizens other than those in these demonstrations have some rights. And I hope sooner or later the Government will recognize those rights and try to protect them.

Of course, that is the responsibility of the Department of Justice. I don't know when Chairman Willis might ask the Attorney General to appear before the committee, and of course the Attorney General is a busy man.

Would it be appropriate, Mr. Chairman, if we asked Mr. Yeagley to inquire of the Attorney General as to what his specific plans are in reference to instituting proceedings before the SACB and the timetable that he anticipated? Would that be inappropriate to do, ask Mr. Yeagley to get that information and supply it to the committee?

Mr. TUCK. Will you do that, Mr. Yeagley?

Mr. YEAGLEY. I would.

I might suggest that the chairman contact the Attorney General himself. I believe they have a good relationship, but if he would rather not I would be glad to.

Also, I know the law provides that the Attorney General must report in writing to the Congress, so I know he has no hesitancy in reporting on what his decisions are. However, I am not sure certain decisions have been made yet.

Mr. WATSON. As you stated earlier you can appreciate that time is of the essence, and I am sure this committee would like to know. If necessary, I will so move we inquire of the Attorney General and get in writing his intentions concerning the filing of any petitions before the SACB because I think it is essential.

Mr. TUCK. I understand the situation and the failure so to do operates to negate or abrogate an act of the Congress of the United States.

Mr. WATSON. It is totally within his authority, and I believe Mr. Yeagley will agree, to bring petitions. The Board itself cannot initiate petitions, and rightly so, because they are supposed to adjudicate them, but certainly the Attorney General is the one who holds the key to it.

If nothing is done for 8 more months, we can readily anticipate that this Board will go out of existence, and we all agree and Congress has so mandated that exposure of these groups and these people are essential to the national welfare.

That is the law of the land.

Mr. YEAGLEY. I would reiterate that Mr. Clark has said more than once he intends to enforce this law. I know he intends to review the material we have given him to determine whether or not he thinks good cases are made, whether or not he thinks in conjunction with the FBI that the informants we would have to use can be spared and determine what the ultimate result would be. This I don't think he has done yet.

I might add, in view of some of the comments here, I can assure the committee every lawyer I have ever had work for me in the security division has always had the desire and intent to enforce the law. They have all done the best job they know how and they have done it with the best spirit conceivable and they have been an excellent group of lawyers to work with.

Mr. WATSON. Of course, Mr. Yeagley, you can understand our anxiety. I would not withhold any from you. Everyone is aware of the fact that this bill signed by the President amending the Internal Security Act was opposed by the Department of Justice. When we couple that opposition with the inaction, then I think some people might draw erroneous conclusions. I want to give you and the Attorney General the right to refute those erroneous conclusions that may be drawn.

Mr. CULVER. Does your testimony represent the position of the Attorney General, consolidated Justice Department view, or merely the views of the internal security section of the Department?

Mr. YEAGLEY. I would not pretend to say when I answer questions here that I am speaking for Ramsey Clark, nor that I know of his every thought.

On the other hand, he had no hesitation at all in sending me up here as his representative to testify.

He did not have the time to study these bills. He had some familiarity with them. He had no time to go over our proposed statement.

Mr. CULVER. Then it does represent the view of the United States Department, as headed by the Attorney General of the United States, on this bill?

Mr. YEAGLEY. I would say the statement represents the views of the Department of Justice. I think I have used some of my personal opinions in answering questions.

Mr. CULVER. It seems to me generally in the recommendations you have made regarding the correction of the present potential problem areas that you detect in the legislation before us, you consistently refer to existing administrative authority under which you now operate the Government security program.

On page 1 you specifically state there is not a compelling need for such legislation in view of the satisfactory operation of the present industrial personnel security program under Executive Order 10865.

On page 4 you say although a screening program places a much heavier administrative burden on the Government than the *Robel* case criminal statute, it can be more narrowly drawn and therefore would have a better chance of withstanding constitutional ties.

In short, my question then is: Do I correctly understand you to say that you think there is existing adequate authority in this particular area to properly fulfill the responsibilities to maintain the internal security interests of the United States in this area?

Mr. YEAGLEY. That is a good question. Courts have not specifically answered that. In overthrowing previous programs and laws and actions of executive branches, the Court, as you know, I am sure, has said it was doing so because of the denial of confrontation or because some other infringement of a person's rights had not been authorized by Executive order or statute.

It did not say that it would necessarily approve the denial of such rights by Executive order.

In the *Shoultz* case, they refused to recognize such denials authorized by a Department of Defense directive under an Executive order.

Mr. TUCK. That was just the second bell. I want you to propound any questions you wish but we are going to have to either recess or adjourn.

If your questions are of such a nature that you want him to come back here at a later date——

Mr. CULVER. I would like to respectfully suggest if at all possible we arrange a time when Mr. Yeagley and Mr. Liebling could come back.

Mr. TUCK. I would suggest we recess the committee to be recalled upon the order of the chairman which may be next week or some other time and not try to fix a date now.

Mr. YEAGLEY. I would like to be the innocent bystander, but I can discuss it with you in a couple of minutes.

Mr. TUCK. The committee will now stand in recess to meet again upon the call of the chairman of the committee.

(Whereupon, at 12:15 p.m., Thursday, May 2, 1968, the subcommittee recessed, to reconvene at the call of the Chair.)

HEARINGS RELATING TO H.R. 15626, H.R. 15649, H.R. 16613, H.R. 16757, H.R. 15018, H.R. 15092, H.R. 15229, H.R. 15272, H.R. 15336, AND H.R. 15828, AMENDING THE SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

Part 1

WEDNESDAY, MAY 22, 1968

UNITED STATES HOUSE OF REPRESENTATIVES.
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

PUBLIC HEARINGS

The subcommittee of the Committee on Un-American Activities met, pursuant to recess, at 10 a.m., in Room 311, Cannon House Office Building, Washington, D.C., Hon. Edwin E. Willis (chairman) presiding.

(Subcommittee members: Representatives Edwin E. Willis, of Louisiana, chairman; William M. Tuck, of Virginia; John C. Culver, of Iowa; John M. Ashbrook, of Ohio; and Albert W. Watson, of South Carolina.)

Subcommittee members present: Representatives Willis, Tuck, and Culver.

Committee member also present: Representative Richard L. Roudebush, of Indiana.

Staff members present: Francis J. McNamara, director; Chester D. Smith, general counsel; and Alfred M. Nittle, counsel.

The CHAIRMAN. The subcommittee will come to order.

This hearing was continued today to resume the questioning of Mr. Yeagley.

Mr. Yeagley, will you please come forward?

FURTHER STATEMENT OF J. WALTER YEAGLEY, ASSISTANT ATTORNEY GENERAL, ACCOMPANIED BY KEVIN T. MORONEY, CHIEF, APPEALS AND RESEARCH SECTION; AND JOHN F. DOHERTY, FIRST ASSISTANT, INTERNAL SECURITY DIVISION, DEPARTMENT OF JUSTICE

Mr. YEAGLEY. Yes, sir, Mr. Chairman.

The CHAIRMAN. We are glad to have you again.

Mr. YEAGLEY. Thank you very much, Mr. Chairman.

The CHAIRMAN. Proceed, Mr. Culver.

Mr. CULVER. Mr. Yeagley, I have some questions with regard to the manner and extent to which personnel screening programs currently

operate and I would be grateful if you would enlighten me in this regard. First of all, with respect to the difference between the Industrial Defense Program and the "less selective" Industrial Security Program, what is the nature of the services performed or products manufactured by facilities in the Industrial Defense Program?

Mr. YEAGLEY. I am not quite sure what you mean by the Industrial Defense Program. Do you mean the Industrial Security Program, the screening program?

Mr. CULVER. You make a distinction, I recall, and the other witnesses between two programs, the Industrial Defense Program and the so-called less selective Industrial Security Program. Is that not correct?

Mr. YEAGLEY. No, I don't recognize the terminology "Industrial Defense."

The CHAIRMAN. State it in your own way if you drew a distinction between any two things.

Mr. YEAGLEY. I am sorry. I don't understand the question, Mr. Chairman. That is my trouble.

The CHAIRMAN. All right.

Mr. CULVER. What is the nature of the services performed or products manufactured, Mr. Yeagley, by facilities in the Industrial Defense Program?

Mr. YEAGLEY. Well, the words "Industrial Defense Program"——

Mr. CULVER. Excuse me. Is this a distinction that is more appropriate and applicable to the program that Mr. Liebling of the Defense Department testified to?

Mr. YEAGLEY. Yes, this seems to be a problem that the Defense Department could answer better than I could.

Mr. CULVER. I understand. How many individuals would you estimate are presently employed in the facilities now currently being screened in the country?

Mr. YEAGLEY. I don't know.

Mr. CULVER. Are all such employees subject to the same screening criteria and procedures?

Mr. YEAGLEY. Yes, sir; if they fall within the Industrial Security Program under Executive Order 10865.

Mr. CULVER. Under a future program assuming that the proposed legislation is enacted in substantially its present form, would that assist you?

Mr. YEAGLEY. Yes, I believe it would. Of course, there are changes proposed in this bill such as extending the screening program to defense facilities as distinguished——

The CHAIRMAN. Would this be the distinction? In this particular bill, the term "defense facility" is defined as distinguished from the one undefined that the Supreme Court found fault with. In other words, the bill is to cure and to satisfy and to comport with the Supreme Court decision.

Mr. CULVER. I wonder, Mr. Chairman, if I might request that maybe Mr. Liebling could also take a place at the table and that might expedite the questioning, because I think some of the questions I have would perhaps be more appropriate for him and he would be the appropriate witness to give the response.

The CHAIRMAN. That would be all right.

Mr. Liebling, you may come forward.

FURTHER STATEMENT OF JOSEPH J. LIEBLING, DIRECTOR FOR SECURITY POLICY; WILLIAM SCANLON, DIRECTOR, OFFICE OF INDUSTRIAL SECURITY CLEARANCE REVIEW; AND CHARLES HAAS, INDUSTRIAL DEFENSE BRANCH, DEPARTMENT OF THE ARMY, DEPARTMENT OF DEFENSE

Mr. CULVER. Mr. Chairman, I have a series of questions here and I wonder if the appropriate witness could reply as they determine to be appropriate.

The CHAIRMAN. All right.

Mr. CULVER. I wonder, Mr. Liebling, going back a moment, could you enlighten the committee concerning the difference between the Industrial Defense Program and the "less selective" Industrial Security Program and what is the nature of the services performed or products manufactured by facilities in the Industrial Defense Program?

Mr. LIEBLING. One of the major differences, of course, in the Industrial Security Program is the fact that the facilities under that program primarily are concerned with production of munitions and related services by contract in support of the Armed Forces.

The CHAIRMAN. They are related to war, in other words.

Mr. LIEBLING. Yes, these are war materials as such.

The CHAIRMAN. And they are innumerable.

Mr. LIEBLING. Oh, yes, quite. It is also specifically confined to an area where access to classified information is involved. Only 20 percent of the total Industrial Defense Program are in the field I just mentioned involving war materials, but the other 80 percent of the program deals with support facilities such as water, power, electrical, support facilities, and installations, and there are several others which Mr. Haas can elaborate on.

Mr. CULVER. That is sufficient for our purposes here today, I think. Could you estimate how many individuals are employed in the facilities, just a rough estimate?

Mr. LIEBLING. In which program?

Mr. CULVER. In both categories, the total number of employees.

Mr. LIEBLING. The total number whether it is classified or not, just overall defense industries complex versus outside defense?

Mr. CULVER. Could you give the committee a rough estimate of the number of employees in the United States industry today that would be subject to the clearance procedure administered by your program under either category?

Mr. LIEBLING. The number of industrial personnel under the Industrial Security Program today with security clearances of all types is approximately 2.2 or 2.3 million persons. As far as the Industrial Defense Program is concerned, of course, none of these people are cleared except the 20 percent that I mentioned before who are also included in the Industrial Security Program.

Mr. CULVER. And the 2.3 million represents a rough total figure of the individuals employed in facilities in both categories?

Mr. LIEBLING. No, these are the cleared employees.

Mr. CULVER. I want to know the total number of employees in United States industry today under both categories of security designation

who are being subjected to the screening procedures administered by your Department. I hope I made myself clear.

Mr. LIEBLING. We have no overall figures of the total amount of people employed. However, as I indicated, 2.2 or 2.3 million have clearances under the Industrial Defense Program. These are subject to screening. I believe, based upon a sampling from Industrial Defense figures, there might be roughly 8 to 11 million employees of industrial security facilities.

Mr. CULVER. What in the other category, the number of employees?

Mr. LIEBLING. I have no idea how many would be in, let's say, those involved in the particular type of dam or electrical facility.

Mr. CULVER. Can you give an estimate?

Mr. LIEBLING. No, sir. This would be the Department of Labor, I presume. They might have that.

Mr. CULVER. How about under a future program? Assuming that the proposed legislation is enacted in substantially its present form, how would this alter your total figure personnelwise?

Mr. LIEBLING. Again I must answer by saying we have not made any estimate of that, as I indicated in my last testimony. Of course, it would depend on the criteria and ground rules that you lay out and the administrative machinery that this bill would provide us with. It may increase slightly from 2.2 million to—as I say I can't give you an X figure as such, but it would not be that great because the administrative machinery would have to be provided where we would designate certain positions under the Industrial Defense Program as critical or sensitive and then we would put that under the category of the clearance requirement.

Mr. CULVER. Under the proposed legislation would the total number of people being screened be increased or decreased?

Mr. LIEBLING. Increased.

Mr. CULVER. How significantly?

Mr. LIEBLING. We have no idea.

Mr. CULVER. I was interested in your estimates of what additional cost might be represented when you have no idea of how many additional people are involved.

Mr. LIEBLING. You remember that last time I indicated that we have no indication of this because we don't know the extent of the administrative machinery or the scope of clearances that you would require by the bill. We know that there are 3,500 facilities involved in the Industrial Defense Program, but we have no idea of what percentage of that we would bring in.

The CHAIRMAN. Let me ask this question. What are you willing to undertake if this bill is passed by Congress?

Mr. LIEBLING. What are we willing to do?

The CHAIRMAN. I assume you would perform your duties and carry out the provisions of this act if it is made law?

Mr. LIEBLING. Oh, yes, undoubtedly.

The CHAIRMAN. I don't quite follow the purpose of these questions myself.

Mr. CULVER. I think, Mr. Chairman, if I am permitted——

The CHAIRMAN. Let me put it this way. I understand that the gentleman is not satisfied with this proposed bill and I understand he is disappointed because these witnesses think it is a good bill.

Mr. CULVER. Mr. Chairman, I respectfully submit that that is an unfair inference. What I am trying to ascertain is something that I hope will be very useful to this committee as a whole and the Congress of the United States, if I might finish.

The CHAIRMAN. That is a great observation. I appreciate it and I apologize.

Mr. CULVER. I believe it important to try and understand a little bit more about how the administration of this program operates so that we can make an intelligent judgment on the wisdom of this bill and how it might possibly be improved.

The CHAIRMAN. Is the gentleman for the bill?

Mr. CULVER. I have not yet made a determination.

The CHAIRMAN. I hope you will be for it.

Mr. CULVER. I hope we can have a bill consistent with the national security interest and the Constitution.

The CHAIRMAN. Not that we can satisfy you. That is all right.

Mr. CULVER. I think that is a judgment that is rather premature.

The CHAIRMAN. I will apologize if necessary.

Mr. CULVER. Who owns and operates the facilities in the Industrial Defense Program?

Mr. LIEBLING. Who owns and operates them? Private and governmental.

Mr. CULVER. Exclusively.

Mr. LIEBLING. I would prefer Mr. Haas who is a specialist to answer this.

Mr. HAAS. A majority are privately owned and privately operated. There are Government-owned and contractor-operated plants as well.

Mr. CULVER. Could you give me a rough percentage breakdown? I won't hold you to it necessarily.

Mr. HAAS. I would say less than 5 percent are Government owned, contractor operated.

Mr. CULVER. Thank you. Similarly with respect to the approximately 13,000 facilities within the Industrial Security Program, are all individuals in such facilities subjected to the same screening criteria and procedures?

Mr. LIEBLING. No, sir. Only those who would require access to classified information.

Mr. CULVER. As I recall, the recommendation you made to the committee was that we should make an effort to narrow the sensitive categorization.

Mr. LIEBLING. We have it now defined that way.

Mr. CULVER. I know in some of the references to the legislation before us this recommendation has been made.

Mr. LIEBLING. Yes. As I indicated earlier, we would have to designate certain positions as sensitive.

Mr. TUCK. Would the janitor also be subject to examination? I would think that he would be in a better position to find out about defense secrets than anybody else would. The janitor carries out the wastepaper.

Mr. LIEBLING. Yes, under the Industrial Defense Program, Mr. Congressman——

Mr. TUCK. I am in favor of not allowing anybody to get these secrets.

Mr. LIEBLING. In those positions that you just indicated under the Industrial Security Program——

Mr. TUCK. I want to make it just as tight as we can make it under the law.

Mr. LIEBLING. We do, in fact, do it now.

Mr. TUCK. I have no sympathy for anybody that would destroy the Government of the United States or give out the defense secrets against our interests.

Mr. CULVER. Mr. Liebling, how many facilities and how many screened individuals would be involved if the proposed legislation were enacted in substantially its present form and if executive authorities administered personnel screening procedures to the maximum extent authorized by the pending legislation? Do you still find it impossible to make a judgment?

Mr. LIEBLING. Yes, I would have to reiterate my previous answer.

Mr. CULVER. What categories of facilities that produce goods anyplace in the Nation could *not* be subjected to the personnel screening requirements to be authorized by the pending legislation?

Mr. LIEBLING. Most U.S. plants would not be so covered. I would say those that would be involved are initially in direct support of industrial facilities that are producing military arms such as, let's presume, the water, power, and dam close by to the facility that would require generation, power units, and so forth, a rather critical item which would require the outside assistance of the particular facility that we are discussing under the program. This would be a critical area. In other words, you could not perform without this water power or generation for your electrical facilities in the area although they might be completely separate. So as I am saying, it is direct support for production of a military arm as such.

Mr. CULVER. As I recall, you made a recommendation in your initial statement to broaden the general categorization of the facilities affected. And I was wondering whether or not it is not true that if we employ the term "national interest purpose" that virtually every product today could be thought to have some "national interest purpose."

Mr. LIEBLING. In regard to broadening the "standard" for making security decisions my answer is "no." If you remember I also indicated that we would obviously use some pretty good sensible judgment in this proposed broadening in the criteria now in play where we define what particular type of facilities we would cover so that we would not use that. Legally, possibly, the Secretary of Defense would have the authority to broaden in these areas that you are alluding to, but it would be completely unlikely.

Mr. CULVER. It might be unlikely, but that is rather broad authority that he is being provided; is it not? Isn't that true?

Mr. LIEBLING. It is broad, but we have got to exercise some judgment.

Mr. CULVER. That is right. I agree. We have to exercise judgment, both in the enactment of legislation as well as its administration. Under the proposed legislation would the personnel screening requirements apply to all, some, only a few, employees of the facilities that had been designated, not because of current operations at such facilities, but because at some time in the future such facilities could become engaged in activities that would have the requisite relationship to the national security?

(At this point Mr. Watson entered the hearing room.)

Mr. LIEBLING. My answer is that, I would have to reiterate, would depend on how you prepared the bill. We will carry out the bill as Congress wants.

Mr. CULVER. As presently drafted.

Mr. LIEBLING. As presently drafted, as I said, we don't visualize a substantial change or increase in the number of facilities. As far as clearances are concerned, we would declare certain positions under our administrative machinery as critical or sensitive and we would provide clearance for those activities the same as we do in our industrial security program.

Mr. CULVER. Would designation of such a "standby" facility have, as a prerequisite, any contractual arrangement, tenative or otherwise, between the Federal Government and the owner of such facility?

Mr. LIEBLING. This could be one prerequisite of enveloping the individuals under the clearance program.

Mr. CULVER. Is it at the present time a prerequisite that is employed?

Mr. LIEBLING. No.

Mr. CULVER. I get a nod "yes" from your assistant and a "no" from you for the record.

Mr. LIEBLING. It may or may not be.

Mr. CULVER. It may or may not be.

Mr. LIEBLING. If you got the nod "yes," I would like to hear the clarification.

Mr. HAAS. Well, I meant "yes" only to the extent that many standby plants that can produce military material do have contractual arrangements, but it is not an absolute prerequisite. The inference, as I understand it, is that we are talking about facilities in standby condition. As such, these are facilities which have existing capacity or a latent capability to respond immediately. It is not the kind of thing that existed in World War II, for example, where a wallpaper firm started making ammunition fuses. We are talking about plants that are ready to produce military or supporting services.

Mr. CULVER. The thing that I was interested in determining for the record is this:

Must the facility have clearly expressed willingness to perform work in the future that would affect the national interest, or can "designation" be imposed upon a facility against its will or at least without its consent?

Mr. LIEBLING. No, in response to your first part. It does not necessarily follow that the facility has to indicate its willingness. I would presume that in a critical world situation or because of requirements of the Defense Department we may initiate the designation of a particular facility. The reason you observed the "yes" or "no" is because we may be talking about facilities where a contract has been phased out and we are not using it now, where we have aircraft, let's say, stored or converted to commercial use, or something like that, but the facility has the capability and we could convert it depending on the national requirements.

Mr. CULVER. When a facility comes for the first time within the operation of either the Industrial Defense Program or the Industrial Security Program, are experienced persons already employed at such facilities subjected to the same screening criteria and procedures as are persons who subsequently apply for employment there? I will state it

somewhat differently, if I may. Is any preference or security of employment tenure afforded the people who are already working at the facility and have, for example, been performing their work there in a manner satisfactory to their employer?

Mr. LIEBLING. I would presume this is an employee-employer relationship and if the contract is curtailed obviously it would be an old bunch of employees; if they are required in another facility, for example, if the space program requirement emerged in Houston, Texas, and we curtailed many programs in New York; so the tenure aspect is a labor problem.

Mr. CULVER. It is a labor problem. Would the same be true for future operations under the personnel screening program that would be authorized by the pending legislation?

Mr. LIEBLING. Yes.

Mr. CULVER. If a longtime employee loses his job because "clearance" is denied, would he ordinarily lose pension or retirement rights?

Mr. LIEBLING. You are talking about a labor requirement again. Let me say this:

If a longtime employee loses his security clearance, he still can work in the same facility on an unclassified basis. It does not necessarily mean he is curtailed from employment.

Mr. CULVER. I understand. If so, does the Government compensate him at all in any way for any adjustment if he is forced to take an inferior position?

Mr. LIEBLING. I presume the labor laws would be applicable to him as well as anybody else, the security factor nothwithstanding.

Mr. CULVER. Would the pending legislation make personnel screening requirements with respect to—I think this is the point that disturbs me—the subcommittee statement of the principle provisions of this bill stated in the second paragraph, paragraph 1, that the bill, "narrows the type of facilitities" which may be designated as defense facilities. On the other hand in your prepared statement at page 5 you say the new definition of "facility" for paragraph 7 of section 3 "is more comprehensive than the existing law" so that you think it will enlarge, contrary to the subcommittee statement, the total number.

Mr. LIEBLING. Enlarge the number of facilities that would be involved?

Mr. CULVER. And individuals.

Mr. LIEBLING. I can't comment on what the committee's intent is as such in this. I indicated and I would say again that the increase for this would not be substantial and, therefore, I would consider that, as the committtee proposed, it is narrowed in this sense.

Mr. CULVER. Mr. Liebling, I wonder, would personnel screening programs be administered under the proposed legislation in substantially the same manner as they are under your present authority?

Mr. LIEBLING. Yes, sir, they would.

Mr. CULVER. In a case where investigation discloses no reason why an individual should not be cleared who would make the initial, and any subsequent, determination that such an individual was cleared?

Mr. LIEBLING. In the case of Confidential clearances, the contractors are authorized under our Industrial Security Program to grant Confidential clearances at the present time.

Mr. CULVER. The contractors.

Mr. LIEBLING. The contractors can do this.

Mr. CULVER. You mean the facility involved makes it?

Mr. LIEBLING. Yes, under the Industrial Security Program for Confidential, in most areas of Confidential. In Secret and Top Secret, the Government makes the judgment on this, but the requirement for the employee to have access is determined by the contractor and then submitted into the system for a judgment by the Government.

Mr. CULVER. Now, in the case you just described, would the same person make the initial determination, assuming the investigative reports warrant it, that the individual should not, at least without further proceedings and inquiry, be cleared?

Mr. LIEBLING. Again it would depend on the limitations that you laid out for us, but I would answer with a broad statement that, if we have presumed as I answered earlier that we will apply the Industrial Security Clearance Program to the Industrial Defense Program, then my answer would have to be yes, we would use the same procedures.

Mr. CULVER. Would this differ depending upon whether the Industrial Defense program rather than the Industrial Security Program was involved?

Mr. LIEBLING. No.

Mr. CULVER. There would be no difference.

Mr. LIEBLING. No. We would use the same procedures.

Mr. CULVER. All right.

Thank you. I have a few more questions, but we can all relax.

Now, are the persons making such determinations Government employees in all cases except the one you described with regard to the Confidential clearance?

Mr. LIEBLING. Yes.

Mr. CULVER. Do they have any security of tenure?

Mr. LIEBLING. Do they have security of tenure?

Mr. CULVER. The Government employees making the determination.

Mr. LIEBLING. Oh, yes.

Mr. CULVER. Any independence, such as that supposedly enjoyed by hearing examiners under the Administrative Procedure Act.

Mr. LIEBLING. Any independence?

Mr. CULVER. Such as that enjoyed by hearing examiners.

Mr. LIEBLING. Our hearing examiners are Government employees under our program.

Mr. CULVER. Do they have a similar independent status as under the Administrative Procedure Act?

Mr. LIEBLING. No.

Mr. CULVER. Are such initial determinations that an individual should not be cleared made on the basis of the investigative reports alone?

Mr. LIEBLING. No. A clearance action is initiated on the part of the contractor. It goes to a central activity known as the Defense Industrial Security Clearance Office in Columbus, Ohio, which operates the clearance program for the Department of Defense, and clearance judgments are made there by experienced people. If any serious derogatory information is developed, then the jurisdiction immediately moves into Washington to my office, and screening boards will undertake to review the investigative findings of the case, and we have specific

procedures laid out under that program under DoD Directive 5220.6, which will be available for the committee. In the case where the screening board will find that the derogatory information is such that we want to further inquire into the questionable areas, we will provide a statement of reasons to the individual, and he is afforded complete due process procedures.

The CHAIRMAN. That is the point I want to address myself to. In other words, if a person is, let's say, branded or about to be branded as a security risk, and he objects to it, he has some machinery to defend himself under due process; does he not?

Mr. LIEBLING. Yes, sir. It is quite thorough and quite effective, and he is afforded due process, and the Government's position is pretty well taken, too.

Mr. CULVER. Would he have access to the investigative report?

Mr. LIEBLING. No, sir. He does not.

Mr. CULVER. He does not?

Mr. LIEBLING. No.

Mr. CULVER. If not, are there any circumstances in which the reports would be made available for inspection—but not for copying or other dissemination—to an attorney who might enjoy the necesssary clearance?

Mr. LIEBLING. No. The statement of reasons provides sufficient information which are the conclusions of the screening board. The statement of reasons is made available to an attorney or to the applicant, and there are sufficient details for him to present his case to the Government and, as I say, it would go through the machinery of due process, and so forth.

Mr. CULVER. In what percentage of the cases, Mr. Liebling, where an initial decision has been made that an individual should not be cleared have further proceedings resulted in issuance of a clearance?

Mr. LIEBLING. In the total cases that we had last year, which are 715 cases submitted where derogatory information was involved, of which 577 were processed by the Government, approvals were granted in a total of 50.3 percent of the cases.

Mr. CULVER. 50.3 percent.

Mr. LIEBLING. Yes.

Mr. CULVER. What are the consequences of a denial of clearance to an individual? For example, if he is an employment applicant, can the employer nonetheless proceed to hire him and forego all, or less than all, Government work?

Mr. LIEBLING. As I indicated earlier, if denied clearance he can be used in unclassified areas.

Mr. CULVER. Could he be hired, or continued in employment, but simply be denied access to classified information?

Mr. LIEBLING. Yes, he can.

Mr. CULVER. Must the employer refuse to hire, or refuse to continue to employ, one who is denied a clearance, or can be just be reassigned?

Mr. LIEBLING. There is no Government direction to an employer that he must automatically or absolutely bar an employee.

Mr. CULVER. In the single exception of a case where the total operation was strategic or security in nature.

Mr. LIEBLING. Well, in a case like that I presume the employer would consult with the Government.

Mr. CULVER. Would the same disability apply to employees denied clearance where their employment was or would be in a plant designated merely for standby purposes, the same action would be taken?

Mr. LIEBLING. If the position were determined as critical or sensitive, where we apply the same criteria under the Industrial Defense Program as we do now in the Industrial Security Program, yes, we would use the same principle.

Mr. CULVER. This is the point that I wish to establish and clarify just for myself. This is not a hostile confrontation, I hope.

Mr. LIEBLING. I accept it as such. It certainly is not.

Mr. CULVER. I think it is useful for me at least to know to what extent, if any, denial of clearance only means denying an individual access to classified information, as distinguished from denying or inhibiting his employment opportunities. That is a question that concerns me.

Mr. LIEBLING. As I said, it is a matter of official policy and procedure. He can be employed in unclassified work in unclassified areas, but of course you are talking about an employer-employee relationship there. The Government would not enter into a situation like that in the Industrial Security Program and would be precluded from doing so under present guidelines.

Mr. CULVER. Do the persons who make final decisions on clearance have access to any information, for example, investigative reports that are not presented openly at a hearing? They do?

Mr. LIEBLING. Certainly, for the screening board.

Mr. CULVER. If they do, does the availability of hearings or other further proceedings mean anything in determination of or defending the individual's interest?

Mr. LIEBLING. It certainly does.

Mr. CULVER. On the basis of this report.

Mr. LIEBLING. As I indicated earlier, he is given a statement which is in pretty much detail.

Mr. CULVER. Pretty much detail.

Mr. LIEBLING. Pretty much detail. He can come in with his attorney. Obviously if we have approved 50.3 percent; that is indicative that there have been slightly more than half that have been justified.

Mr. CULVER. That figure impresses me. I am very impressed by that figure. I think it does speak well for the administrative machinery on the basis of the total number of cases considered. With respect to the provisions of the proposed legislation that provide for the granting of immunity when testimony is to be compelled from a reluctant witness, would the individual whose clearance is at issue have the right to require that immunity be granted to a reluctant witness whose testimony he wished to introduce, or as perhaps seems probable would the granting of immunity be an option that was available only to the authorities whose job was to deny clearance?

Mr. LIEBLING. I think we are getting into an area where you are talking about our hearing procedure and due process procedure or the right of confrontation or bringing before a board. I would have to defer to the attorneys on that.

Mr. YEAGLEY. I would have to recheck the language of the immunity provision and I don't recall that it would apply in the fashion that you have described it, Mr. Congressman. Certainly an individual

citizen should not have the authority to grant immunity, but if it went before the Board, it would be up to the Board. I am thumbing through the bill and am unable to locate the immunity provision to give you a better answer.

Mr. NITTLE. That is on page 19, subsection (n).

Mr. YEAGLEY. I believe the answer would be yes that it could be done that way. As you know, it provides for regulations to be issued by the President under which process can be issued apparently by the Board to bring a person in. And if the person refused to testify on the grounds that it might incriminate him, apparently the Board can compel his testimony regardless of whether it was a Government witness or employee witness. Apparently there is no distinction and that immunity could be given.

Mr. CULVER. I have one last line of questions regarding how the operations of a screening program could be narrowed consistent with the national security interest.

I think, Mr. Yeagley, you suggested in your prepared statement, or at least seemed somewhat receptive to, a narrowing of the proposed legislation. The thing that disturbs me is that the basic criterion for clearance, "consistent with the national interest," seems to me to be so broad as to vest almost unlimited discretion in the authorities administering a screening program, whether it is the Secretary of Defense or whoever he may be.

At page 22 of the transcript Mr. Liebling suggested the "consistent with the national interest" standard in preference to, and as broader than, a standard focusing on "national defense and security interests." This makes it clear——

The CHAIRMAN. I might advise my good colleague that the bill had the words "security interests" and changed, or what were the words? Would you respond to that, Mr. Smith?

Mr. SMITH. Yes, "national interest" and we had "security interests."

Mr. CULVER. And I much prefer the committee's language and I would like to discuss this.

The CHAIRMAN. We might go back to it. I don't know.

Mr. CULVER. It seems to me that this would enable someone in the executive who was conducting the screening to see that the considerations to be protected in administering the screening program were not limited to military or industrial security and other national interests might be taken into account. There are, of course, virtually an infinite variety of national interests. It seems to me that it is in our national interest to have harmonious relations with other nations.

Mr. Liebling, do you think to have harmonious relations with South Africa, a gold-producing and strategically situated country, with bases that could be of significant military utility, the employment of Negroes in certain positions be barred?

Would employment of an individual who is widely known as being dogmatically and eloquently opposed to dictatorships of any form whatsoever be "in the national interest" in maintaining good relations with such countries?

With respect to good relations with Nationalist China what about an individual who thinks that the cause of peace would be served by increasing interchanges between the United States and Red China? I would be interested in your views on this.

Mr. LIEBLING. These would be my personal views I presume based on my experience.

Mr. CULVER. Just based on the wisdom of providing such a broad authority.

Mr. LIEBLING. I will admit that the executive branch—if you get into the legal aspects of what we mean by national interests or national security, I will have to defer to Mr. Yeagley on this aspect, but as far as national security and national interest to me is concerned, as such, in administering a program like this, obviously your prime application of the program, your prime consideration would be your ability to defend yourself so national interest or national security to me would be one political harmony, yes, to answer you generally, here and abroad, economic stability, military capability to defend yourselves against adversity.

Mr. CULVER. What do you find undesirable about the initial committee language, which I think is much more tightly drawn and narrow and responsible than the administration language?

Mr. LIEBLING. We don't find it objectionable at all. We merely indicated a change which to us——

Mr. CULVER. Would broaden it.

Mr. LIEBLING. Because we have been working under an Executive order which uses the phrase "consistent with the national interest."

Mr. CULVER. So you have just gotten comfortable with the phrase.

Mr. LIEBLING. I understand it, I presume.

The CHAIRMAN. Where were those words initiated, in whose administration?

Mr. YEAGLEY. It was under 10865 under the Eisenhower administration.

Mr. LIEBLING. I believe in '59 or '60.

Mr. YEAGLEY. Whenever 10865 was issued, I believe in 1960.

The CHAIRMAN. During the "new frontier" days.

Mr. LIEBLING. As far as security management was concerned.

(At this point Mr. Roudebush left the hearing room.)

Mr. CULVER. Yes, Mr. Chairman.

Mr. Yeagley, with respect to proposed provisions to preclude judicial intervention pending exhaustion of all administrative remedies, would there be any limit to the time that authorities could take in rendering a final administrative decision?

Mr. YEAGLEY. I don't recall any limitation in the bill.

Mr. CULVER. Would it not be a reasonable accommodation of the differing interests concerned for the legislation to place a time limit, say, of 3 months for administrative proceedings to take their course, at the end of which time judicial intervention should not be precluded in appropriate circumstances?

Mr. YEAGLEY. I don't know what period of time would be reasonable. There is such a variation in the requirements in different cases. Sometimes there are reinvestigations, as I understand. Mr. Liebling would know more of the time problems. As far as we are concerned, it is a matter for the Congress and for the Defense Department.

Mr. CULVER. I was interested, Mr. Yeagley, based on your vast experience in this area. I wondered whether or not you felt that it would be in the interests of the administration of justice and due process

to put some time limit on it, or whether or not this would be inapplicable for some reason and, if so, I would be interested to know the reason.

Mr. YEAGLEY. You are speaking of a time limit after which——

Mr. CULVER. The judicial intervention would be ripe.

Mr. YEAGLEY. If a reasonable time limit can be determined for, let's say, legislative purposes, I would think so. Ordinarily the employee must first exhaust his administrative remedies before going to court.

Mr. CULVER. Would you be kind enough to have your staff give that some reflection and make a recommendation.

Mr. YEAGLEY. Well, the time would be a matter of operations, I think; of what is required in the operations of the program by the Defense Department or within the Defense Department.

Mr. CULVER. Do you have any thoughts on that?

Mr. YEAGLEY. I don't.

Mr. CULVER. Do you have legal counsel with you that might?

Mr. LIEBLING. No. We could check that with legal counsel.

Mr. CULVER. Are there now, or would there be under the proposed legislation, provisions to continue salary payments to an employee who is denied actual employment pending administrative proceedings?

Mr. YEAGLEY. I believe the Department of Defense had some arrangements for compensation, is that right?

Mr. LIEBLING. We do in cases of where the decision may have been reversed where, let's say, a suspension is undertaken or revocation of clearance.

Mr. CULVER. But it is not done in all cases.

Mr. LIEBLING. I have a specialist here.

Mr. SCANLON. May I have the question again, sir?

Mr. CULVER. Yes. Are there now, or would there be under the proposed legislation, provisions to continue salary payments to an employee who is denied actual employment pending administrative proceedings?

Mr. SCANLON. Mr. Congressman, the man is not denied employment while these proceedings are pending, normally. Normally, he must have a job where he needs access before he comes to our program.

Mr. CULVER. But once you make the initial determination and trigger the administrative proceedings my question is, does he remain on the payroll?

Mr. SCANLON. He is not denied a clearance until the proceedings get to the natural end.

Mr. CULVER. The natural end.

Mr. SCANLON. If you will give me a moment to run through this for you. He is hired, his employer puts in a request for clearance. This man is still on the payroll.

Mr. CULVER. I wonder if you could get a mike.

Mr. SCANLON. His employer puts in a request for clearance for him while he is on the payroll. The investigative process is started. He is on the payroll normally during this entire period. The investigation develops adverse information. It comes in to us. We start to adjudicate it. We can clear him, at which point he gets the Secret or Top Secret.

Mr. CULVER. When that adverse information comes in, what do you do with regard to employment?

Mr. SCANLON. If our screening board decides that adverse information is of a serious enough nature to possibly warrant denial of clearance, they will prepare a statement of reasons telling him specifically, and in detail, why they feel he should be denied clearance. He is still not denied employment. He gets the statement of reasons, has an opportunity to answer it in writing and request hearing.

Mr. CULVER. And he is still on the payroll?

Mr. SCANLON. Yes, sir. He comes into the hearing, and this is a point that I would like to correct, where I think there is a misunderstanding just now. Once the statement of reasons is issued by the screening board and the applicant responds to it in writing and requests a hearing, from that point on nobody in the adjudicative process has access to that investigative file. When he goes before the hearing examiner, the Government presents its proof of the allegations in the statement of reasons by live witness testimony and documentary evidence, and so on; the applicant presents his rebuttal and in support for his application for clearance. That is presented in an open hearing before the hearing examiner, who has no access to the investigative file, and he makes his determination based on the information placed in the open record before him without ever seeing the investigative file. If the man is entitled to clearance at that point, he gets the clearance.

If the examiner makes an adverse determination and denies him clearance, he still does not lose his job, as far as the Government is concerned. He has an opportunity to appeal to the Appeal Board.

Mr. CULVER. And he is on the payroll during this period?

Mr. SCANLON. He is still on the payroll, or we discontinue his case as far as clearance is concerned.

Mr. CULVER. I appreciate hearing your response. It seems to me that, without some compensation, how many employees can afford to litigate with the Federal Government and to take an appeal? During this period he is still on the payroll.

Mr. LIEBLING. He is always employed.

Mr. SCANLON. It is only when that final adverse determination is made either by the Appeal Board after the appeal or by the examiner, that then we notify the employer that this man is denied a clearance and the employer can do what he wants to.

Mr. LIEBLING. Even after denial he may still be on the payroll, as I indicated earlier, and be placed in another position. Of course, if he is a highly skilled engineer, this may be difficult.

The CHAIRMAN. Off the record.

(Discussion off the record.)

(At this point Mr. Willis left the hearing room.)

Mr. CULVER. Thank you, Mr. Chairman. I appreciate the time and I wonder, Congressman Tuck, if I may submit the remaining questions I have in writing. I don't want to take any more time. Could I submit those for the record to be answered?

Mr. LIEBLING. That is perfectly OK.

Mr. YEAGLEY. Yes. May I make one other comment on your earlier question about the criteria?

Mr. CULVER. Yes.

Mr. YEAGLEY. My previous comments at the earlier hearing were based on the fact that the standard of "in the national interest" is the standard incorporated in Executive Order 10865 under which the program is presently being operated. It has been operated now for over 8 years, and this particular problem has not to my knowledge been raised as a serious one. I would have to admit, on the other hand, that the question of establishing a criterion, whether the one you suggest, the one in the bill or the one that is being used, is extremely difficult and one that someday will be resolved by the courts. In the personnel screening program of the Government the standard is "clearly consistent with interests of national security." Of course, under the present standard in the Industrial Security Program, if the Defense Department in its operation and application of the criterion would apply it in some of the ways pointed out by you as possibilities, I think then we would lose one of the requirements essential to such a determination. The Government must show that it has a legitimate concern and interest in a particular position that the employee occupies. We must show that we have a legitimate concern over the particular employee in that position; and, if we fail to make that application of the standard, then, of course, the particular case, and perhaps the program, would fall.

Mr. LIEBLING. This is exactly the point. There is no loose application, and it has been working well. We understand it. We are taking care of the Government's interests as well as the individuals. We take tremendous pride in our executive judgment.

Mr. TUCK (presiding). I understand the gentleman from South Carolina wishes to be recognized.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. CULVER. I want to just thank the witnesses, Mr. Watson, for the very helpful information which I think perhaps will improve our ability to properly consider this legislation.

(The additional questions submitted to Mr. Yeagley by Mr. Culver and Mr. Yeagley's responses follow:)

Q. For individuals who will not have access to classified information, could not the relevant national interest in military security be reasonably adequately protected if inhibitions of their employment were made operative only during time of a formal state of war or a national emergency declared by the President? Particularly in the case of standby facilities, in which case the further argument could be made that no employment inhibitions should be enforced until such facilities are in fact converted to the purpose for which they had been designated? Would it not be reasonable to limit administrative discretion so that employment at a given facility could be inhibited only for particularly sensitive positions at that facility? (Revised page 3 of Yeagley's prepared statement indicates that employment restrictions should apply only to persons in "sensitive" positions.)

A. Someone connected directly with security in the Department of Defense could answer this better than I. However, I would think the answer to the first part of this question would be yes.

It is difficult to answer the question re clearances of employees of standby facilities on a hypothetical basis. It would depend on the facts, and it might be difficult to find a sound legal basis for such a program. On the other hand if the program is not initiated until the war or emergency begins, the time required to initiate and complete such a program may well result in a delay in the facility being activated or in its employees not being cleared.

The courts have indicated that if the position involved is not sensitive then the Government's interest in the person who might occupy that position is substantially reduced. It might be extremely difficult today to sustain a denial or

dismissal for security reasons of one in a nonsensitive job although such action could conceivably be sustained where disloyalty is involved. Of course when disloyalty exists it is rarely discovered prior to some overt act by the employee: further it is extremely difficult to prove.

I hesitate to venture an opinion as to what sort of a screening program the Supreme Court would sustain. The Court has said it recognizes the right of Government to protect itself—yet it seems reluctant to uphold security programs. The Court has said the Government can protect itself against saboteurs and espionage agents, but that seems to relate only to persons who are known to have committed espionage or sabotage. Such persons wouldn't be hired in the first place.

If the Court is going to hold that active membership in an organization that advocates anarchy or overthrow of Government by force and violence is insufficient to support a dismissal, then our screening programs will be that in name only. If the Court intends to require the Government to also prove that the particular employee *intends* to advance or carry out the illegal purposes or objectives of the organization of which he is an active member then the Government will not be able to successfully bring charges against employees it has reasonable grounds to believe are disloyal or who may commit serious offenses against the Government. In this area evidence of intent is practically never available until after some overt act has been committed.

For example, the Nationalist Party of Puerto Rico (NPPR) has for years taught and advocated the necessity of resorting to violence to overthrow the United States Government or the Government of Puerto Rico or any subdivision thereof and to use violence against established governmental authority. However, based on present Supreme Court decisions as we understand them, if in the summer of 1950 the two Puerto Ricans who in November attempted to assassinate President Truman had been employees of the Federal Government, we would not have been able to discharge either of them on security grounds even though they were active members of the NPPR. We had no evidence whatever that they intended to carry out the purposes and objectives of the organization.

The same would have been true in the case of the Puerto Ricans who fired shots from the gallery in the House of Representatives in March of 1954. Had they been on the Government payroll shortly before that event and subject to a screening program, we could have shown only that three of them were active members of the NPPR. We could not have proved that any of them had specific intent to carry out the objectives of that organization.

The same problems of proof exist as to members of the Communist Party, U.S.A., or the American Nazi Party or the Klan or any group of anarchists. Even when we can prove a person is an active member of such a group, evidence that he intends to carry out the objectives of the organization simply isn't available. The more dedicated an organization is to the proposition that this Government or any of its subdivisions must be destroyed or overthrown by force and violence, the more difficult of course it is to obtain usable evidence regarding it and its members.

Q. What evidence is there, if any, that American citizens are more likely to commit acts of espionage and subversion for ideological reasons than for other reasons such as *monetary gain?* To the witnesses' knowledge, how many acts of espionage or subversion have been committed by United States citizens who had *not* been cleared by screening programs similar to those now in effect or proposed to be authorized by the pending legislation?

A. I don't know that there is much evidence, certainly there is no conclusive evidence, that American citizens are more likely to commit acts of espionage for ideological reasons than for other reasons such as monetary gain. Up until a few years after the war it appeared that most Americans who had engaged or attempted to engage in espionage against their own country had done so for ideological reasons. Since that time increasing numbers seem to be motivated by monetary reasons. Frequently it is a combination of the two. We know of a few instances in which American citizens turned over classified information to representatives of a foreign government rather than to submit to exposure of a comprising situation in which they had been caught. When a defendant refuses to testify or a subject refuses to be interviewed, it is not easy to determine what his motivation had been.

Acts of espionage are seldom committed by persons who had not been cleared under a screening program since some sort of screening is usually involved if a person has access to sensitive information. However, shortly after the Second

World War several Americans who had not been subject to a screening program were prosecuted for espionage because of their efforts to get national defense information through or from other people who had access to it. For example, the Rosenbergs, Harry Gold, and the Sobles.

On the other hand, most of the persons prosecuted for espionage in recent years have had some sort of a security clearance. For example, Irving Scarbeck, Nelson Drummond, John Butenko, George Gessner, Robert Johnson, James Mintkenbaugh, William Whalen, and Herbert Boechenhaupt.

Mr. WATSON. At our last session some statements concerning President Truman's veto message of the Internal Security Act were used to cast doubt on the utility of the entire statute which the bill that we have under consideration seeks to amend.

In fact, as I recall, I believe my good friend from Iowa, who is certainly an able man, made the statement that it had some "very prophetic observations" concerning the Subversive Activities Control Board. And since I am sure we would like to make a complete record so that the House might have the benefit of the hearings on this particular amendment, I would like to ask a few questions of Mr. Yeagley.

Let me make it clear, first, that I regret that President Truman was brought into this picture. He apparently is enjoying pretty good health, and I think ex-Presidents ought to enjoy a little peace and prestige during the waning days of their lives. Certainly my questions would not reflect, and intend no reflection, upon him in any way. But since he was been brought into it, at least so far as his veto message is concerned, I think that the record ought to be clarified, or at least should give the full benefit of questions on both sides of the issue.

I would like to say also before propounding a few questions that in my judgment, at least from the best information I have been able to receive, some folks have questioned whether or not the President actually wrote that veto message.

I think, primarily predicating it on the fact that the statement was contained in the message, and I did read the message in its entirety last night, that there were many statements offered as incontrovertible truths. Later on, when the Senate and House overruled the President's veto, they firmly controverted the statements made in the veto message.

I know one columnist, Arthur Krock, who is highly respected and a former Pulitzer Prize winner and long a correspondent for the *Times* in Washington, had an interesting column on that. I think it might be helpful for the committee to read that particular article.

Mr. Yeagley, the veto message stated that the Central Intelligence Agency, the Defense Department, the Department of Justice, and the Department of State were all agreed that the bill "would seriously damage the security and intelligence operations" for which they were responsible.

Of course, you have been very close to this situation in your very strategic position heading up the Security Division of the Department of Justice.

Let me ask you, can you think of a single proceeding initiated under the Internal Security Act which has seriously damaged the operations of the Central Intelligence Agency?

Mr. YEAGLEY. Pardon the time for reflection, but I don't want to be careless or make a misleading statement. In this brief effort to recall

the different cases and the sort of testimony produced and the kind of witnesses that were called. I don't remember any proceedings now that we thought at the time or since may have had an adverse effect upon the Central Intelligence Agency; nor do I recall them having raised any question with us about any of those proceedings.

Mr. WATSON. Thank you, sir.

Now can you think of any Internal Security Act proceeding that has seriously damaged the security or the intelligence operations of the Department of State?

Perhaps Mr. Liebling can better answer that question. Can you think of any proceeding under that act which has seriously damaged your security or intelligence operations?

Mr. LIEBLING. I would have to answer off the cuff on that, Mr. Congressman. I am not aware of any. I wasn't in this position. I am acquainted with the position that the Defense Department gave on the bill in 1950, and our concern was specifically confined to section 5 at that time, where we objected to a public divulgence of the sensitive facilities which would then become a means of targeting intelligence information for a foreign government and indicate and disclose certain vulnerabilities, and this is what we confined ourselves to at the time, and I personally am not aware of any as far as your question is concerned.

Mr. WATSON. And of course oftentimes we are apprehensive about things, but they never materialize. And, so far as you are concerned, nothing, so far as any proceeding under this act, has seriously damaged your security or intelligence operations?

Mr. LIEBLING. My experience has indicated no knowledge of any.

Mr. WATSON. You don't know of any. All right, sir.

Mr. Yeagley, can you think of any Internal Security Act provision or proceeding which has done serious damage to both the intelligence and the security operations of what was formerly known as G–2—I don't know what they call it now—or the Army's intelligence unit? I am sure that they would have conferred with you about that if there had been such a serious problem arise.

Mr. YEAGLEY. I don't recall any proceeding that was brought before the Board which would have conceivably had an adverse effect upon the operations of G–2. I suppose they could have had the same concern for the publishing of the list of defense facilities that Mr. Liebling referred to.

I believe that provision was amended in 1962, however, for that very purpose, because they thought it was a problem, in order to do away with the requirement of publishing this list.

Mr. WATSON. Yes, sir. Rather than ask these individually, we will make them collectively because I verily believe that the answer will be the same.

What about the Office of Naval Intelligence, what about the Office of Special Investigations, OSI, of the Air Force's Security and Counterintelligence Unit, and the Air Force Office of Intelligence? Can you think of any provision or proceeding of the Internal Security Act which has done serious damage to their operations?

Mr. YEAGLEY. I believe the answer would be the same, Mr. Congressman.

Mr. WATSON. Thank you, sir.

As far as the FBI is concerned, and that was definitely included in the message because it is the intelligence and security arm of the Department of Justice, I would like to state for the record that FBI Director J. Edgar Hoover has testified before an Appropriations Subcommittee of the House every year since the act was passed in 1950, a period of nearly 18 years. And in the course of his testimony he has made numerous references to the Internal Security Act and he has not once hinted, Mr. Chairman, intimated, or even suggested that the act has in any way hampered, hurt, or interfered with the FBI's security operation.

Mr. Yeagley, I know, the FBI being under the jurisdiction of the Department of Justice, that Mr. Hoover has never made any reference to that. Has he, or have any of his subordinates, ever brought any instance to your attention of this act seriously impairing or damaging their security operations?

Mr. YEAGLEY. I think only in the context that I mentioned in my earlier testimony, that whether it's a proceeding under this act or whether it's an espionage case, we always have the problem of whom are we going to use as witnesses and, if they come from the FBI, will it reduce their coverage in a certain area or will it be detrimental so as to raise a serious problem as to the advisability of using that witness. That problem does exist.

I suppose some people may have thought at the time the Internal Security Act was pending that, with the Communist Party having then many thousands of members, if they gave the Attorney General the authority to file many thousands of petitions, it would require the testimony of many thousands of informants of the FBI whose services thereafter would be lost.

Mr. WATSON. I appreciate your answer, Mr. Yeagley, but would not the same criticism apply to any action under the Smith Act, our espionage statutes, or all other security laws, none of which can be implemented without the use of either defected Communists or espionage agents or FBI informants? Would not the same criticism apply to all of our security acts?

Mr. YEAGLEY. In every case that we have that comes from the FBI we have to consider the nature of the witnesses and what effect it will have on the Bureau. Where we have a question as to whether there may be an adverse effect, we discussed it with Bureau representatives to determine what the problems are and what the decision should be.

Mr. WATSON. Yes, sir; but the same criticism, if there be any, or the same danger, if there be any, would apply to the Smith Act and all other security measures as it relates to the disclosure of informants?

Mr. YEAGLEY. The problem is the same, Mr. Congressman. I was merely supposing that when the bill was being considered some people may have thought it opened up the area to bring maybe hundreds or even thousands of cases, which has not happened.

Mr. WATSON. Mr. Yeagley, I would like to ask you about another allegation which was made in the veto message:

"It would deprive us of the great assistance of many aliens in intelligence matters," and again, "The bill would deprive our Government and our intelligence agencies of the valuable services of aliens in security operations."

Now, Mr. Yeagley, do you know of any cases in which this has been true since the passage of this act in 1950?

Mr. YEAGLEY. I don't believe any have been called to my attention.

Mr. WATSON. In fact, isn't it true that many Communists, a good number of them high-ranking intelligence and political figures, have defected and been granted asylum in the United States since the act was passed and have cooperated with the CIA, the Department of State, and the FBI?

Mr. YEAGLEY. Yes, there have been a good many defections in recent years.

Mr. WATSON. Mr. Chairman, I might point out further that quite a few of these same individuals have also testified before this committee as witnesses and have appeared before the Senate Internal Security Subcommittee, so that we see no validity in that criticism which was presented at that time.

Mr. Yeagley, the message also claimed that enactment of the Internal Security Act "would antagonize friendly governments."

I would like to point out that at the time the act was passed in 1950 this committee's report on the bill pointed out that 30 of the 70 major nations in the world had already enacted much more drastic antisubversive laws than even this one was. Some of them had actually outlawed the Communist Party as such, is that not true?

Mr. YEAGLEY. I am sure it must be. I haven't counted them, but I know that generally what you say is true.

Mr. WATSON. Since that time other nations have done the same thing, while a few have enacted milder security legislation based on the Internal Security Act.

Mr. Yeagley, are you aware of any friendly government which has been antagonized by the passage of the Internal Security Act?

The reason we are trying to get this in the record is that in 1950 we had a lot of speculation, but we have lived with this act now, Mr. Liebling and you lawyers, and the proof of the pudding is in the eating. So that we have been with it for 18 years and we want to find out whether or not all of these apprehensions and fears have been justified and whether this act has seriously impaired our security position.

Mr. YEAGLEY. I don't recall any particular case, Mr. Congressman, in which any foreign government may have been concerned or annoyed by proceedings under this act. I might point out for what it is worth that the Scarbeck espionage case was brought under the espionage provision of the Internal Security Act and involved his compromise in Warsaw by the Polish Security Police. I don't know what their reaction was to that.

Mr. WATSON. Maybe Mr. Liebling can contribute to an answer.

Mr. LIEBLING. I can't.

Mr. WATSON. Are you aware of any friendly government which has been antagonized by our passage of this act?

Mr. LIEBLING. No.

Mr. WATSON. The veto message also alleged that the Internal Security Act would put the United States Government in the "thought-control business."

Mr. Yeagley or Mr. Liebling, have you as the head of this division, or Mr. Liebling over in the Defense Department, tried to control the

thought of the American people, or do you think that such has resulted as a result of the passage of this act?

Mr. YEAGLEY. I haven't considered it a matter of thought-control. I would suppose that there are still people that have that view.

For example, when we brought proceedings against front organizations under this law and brought on witnesses to testify to the Communist influence in the organization to establish Communist domination and control, obviously there were so-called innocent members, sometimes a great many of them, who were not members of the Communist Party, and I think that there were people who felt that this effort was an interference with the operation of their organization.

On the other hand, if you are going to proceed against operations of the Communist Party, that is a determination to be made by the Congress and the executive branch, and it will require the production of evidence of party activities.

Mr. WATSON. Mr. Yeagley, I am sure that you would agree, especially in recent months, that the Justice Department has been rather slow. In fact they have not proceeded at all against anyone, but do you mean to tell me that you have procedures in trying to harass or to control the thought of any individual or that you have tried to prosecute one or identify him as a Communist under the provisions of the SACB? Have you done that?

Mr. YEAGLEY. Not at all, Mr. Congressman. I was trying to say that I suppose there are still people who feel that it is an interference.

Mr. WATSON. There will be people against this, from time immemorial, but you are unaware of and certainly you have engaged in no activity of thought-control?

Mr. YEAGLEY. Absolutely not.

Mr. WATSON. Absolutely not. And lastly the message said that it would give the Government officials "vast powers to harass all of our citizens in the exercise of their right of free speech."

Certainly you have not engaged in any such activities as that, have you?

Mr. YEAGLEY. No, sir.

Mr. WATSON. In fact, isn't it true, Mr. Yeagley, that the Supreme Court in its 1961 decision on the Internal Security Act rejected the claim that the act in any way infringed upon first amendment rights of freedom of speech and association?

Mr. YEAGLEY. That is right.

Mr. WATSON. Even the Court said that. The veto message also claimed that the act would "make it easier for subversive aliens to become naturalized as United States citizens."

Now, do you know of any subversive aliens who have obtained U.S. citizenship under the provisions of this act who would not have been able to obtain it if the act had never been in existence?

Mr. YEAGLEY. No, I don't.

Mr. WATSON. You don't.

Finally, Mr. Yeagley, the veto message said that the Internal Security Act "would not hurt the Communists, instead it would help them * * *.

"I repeat"—and again reading from the veto message—"the net results of this bill would be to help the Communists, not to hurt them."

Now, at this point I would like to state that in the testimony before the House Appropriations Subcommittee and also in the Annual and Fiscal Reports of the FBI, J. Edgar Hoover has made it clear that the very opposite is true, that the act has very definitely hurt rather than helped the Communist Party.

In addition, former FBI undercover operatives have testified over and over again before this committee that the Communist Party fears the Internal Security Act, has been intensely worried about it, and has most definitely been hurt by it.

Statements by J. Edgar Hoover and FBI agents of the type I have mentioned were inserted in the *Record* by Mr. Ashbrook of this committee on November 28, 1967, when the chairman's bill, H.R. 12601, a bill to amend the Internal Security Act, was being debated.

By the way, this bill, as you know, passed the House by a vote of 269 to 104. In fact, Mr. Yeagley—and I want to commend you for this—relating to this particular point as to whether or not it has hurt or helped the Communist Party, you testified yourself before the Internal Security Subcommittee last year that the Internal Security Act was the law most feared by the Communists and that they have worked harder to defeat it than any other law; is that not true, sir?

Mr. YEAGLEY. I believe I did.

Mr. WATSON. And, Mr. Yeagley, finally, do you know of anything that would contradict the testimony of Mr. Hoover, former FBI undercover operatives, and your own testimony on this issue and which would indicate that the act has helped rather than hurt the Communist Party?

Mr. YEAGLEY. No, I don't know of any way in which this law has helped the Communist Party.

Mr. WATSON. Thank you very much, Mr. Yeagley.

Mr. CULVER. Mr. Chairman.

Mr. TUCK. You may ask one or two additional questions.

Mr. CULVER. Mr. Yeagley, I certainly agree with Congressman Watson that the proof of the pudding should be in the eating. We have had this statute on the books for 18 years. We have yet to register a single Communist. It has cost the American taxpayers $6 million during that period in appropriations. As I think Mr. Truman wisely anticipated, it has resulted in endless constitutional argumentation for nearly 2 decades.

I wonder whether or not, on the basis of that, you really feel that this statute has been all that effective. We discussed the disclosure record, but certainly that has been an accurate forecast, has it not, as far as your experience with it?

Mr. YEAGLEY. I am not sure that I understand. If I understand the question, my answer would be that there have been constitutional questions raised in the proceedings that have been brought, in all of them, if that is what you are asking.

Mr. CULVER. And almost without exception there has been a finding of unconstitutionality in various aspects of the legislation, in various parts of the statute; is that not true?

Mr. YEAGLEY. Yes, as to the membership provisions. However, in the basic case that was decided in 1961 the Court upheld the law, but held later on, when we were down to enforcing it, that if they exercised the fifth amendment, it becomes enforceable.

Mr. CULVER. What has been the substantive effect of the Court's finding? Hasn't it been, the long and short of it, to essentially gut the statute or to do so on a piecemeal basis?

Mr. YEAGLEY. Yes, except for the organizational provisions that the Court has not ruled on. I suppose that this is the reason that the Congress amended the statute to accord with Court decisions earlier this year.

Mr. CULVER. So there has been generally a consistent finding of unconstitutionality or at least a frequent finding during the 18 years of this statute?

Mr. YEAGLEY. Except for the two areas I mentioned.

Mr. CULVER. I was interested also in Congressman Watson's statement with regard to your willingness to enforce the law and, as you are not unaware, there have been repeated demands in the Congress that the Attorney General take a more aggressive posture with regard to the implementation of the SACB legislative scheme.

With regard to that and with regard to the suggestion that this helps and doesn't hinder, has there been any reluctance to "enforce the law" because it will possibly risk the compromising of very valuable intelligence information if you were to implement fully and without administrative discretion concerning the directives of this statute?

In short, I am saying, if you did what the Congressman said to do, that is, enforce the law as aggressively and boldly as the statute permits, would not such an implementation, in your judgment, necessarily result in the compromise of valuable intelligence information that this Government now possesses?

Mr. YEAGLEY. I don't know that I would say so necessarily. I would have to point out again that each proceeding involves producing some FBI informants and removing them from their duties as informants, also, with the changing posture as to disclosure of electronic surveillances, we must determine in each proposed proceeding not only whether these many be taint, but whether or not there is any problem in that area. Right now we are quite interested in knowing what the Supreme Court's decision is going to be in the *Kolod* case.

Mr. CULVER. If you were sitting in the White House in Mr. Truman's chair in 1950 and you were presented with this statute and you were conscientious in terms of the executive branch responsibility to "enforce the law" and you could reasonably anticipate congressional pressure to do so, can't you understand why the Attorney General might recommend on that occasion that at first blush this would call for the compromising of very valuable intelligent information if we were to "vigorously enforce the law"?

Is it not the thing that frustrates the Congress that we have had attorneys general that have exercised discretion and discrimination in the relatively few cases that they have seen fit to initiate under the statute and that has been a determination of the national interest which they administratively felt to be appropriate?

Mr. WATSON. Mr. Chairman, certainly Mr. Yeagley needs no defense at my hand, but I think it is grossly unfair for my friend to ask him as to what he would do if he were in Mr. Truman's shoes. We have tried personally to eliminate Mr. Truman and not reflect upon him, and the line of my questions was specifically concerned with certain points of that veto message.

Mr. CULVER. Mr. Chairman.

Mr. WATSON. I asked specifically as to the particular points rather than what he would have done had he been in Mr. Truman's shoes. I think it is unfair.

Mr. CULVER. Mr. Watson, if we could have the record show very clearly that I certainly don't want to eliminate Mr. Truman. As a matter of fact, I think my political record in the Congress is generally much more sympathetic to the views which he espoused than some other members of the Democratic Party. But I do think it is not inappropriate to try and make a careful determination here as to what is frustrating Congress about the enforcement of this law, what are some of the impediments to the vigorous enforcement of the law, and whether or not in fact the answer to that is that very possibly it would result in the compromise of intelligence information. And I know Mr. Watson has asked Mr. Yeagley to testify whether or not we have experienced problems with the CIA, with the Department of the Navy, with relations with the foreign governments, with immigration cases, and it seems to me, with all due respect, that these are also questions which the appropriate officials in the CIA are only qualified to respond to with expertise, or perhaps the Secretary of the Navy or perhaps the Secretary of State or someone else who initially gave that particular counsel and admonition to President Truman and, therefore, I think in the history of the past 18 years are best able to assess the effects on the adminstration of their own programs.

I just hoped Mr. Yeagley might play President for a moment in response to my question.

Mr. TUCK. I would think if I were in Mr. Yeagley's case, I would not care to answer the question as to what I would do if I were President of the United States 18 years ago.

However, if he cares to answer, that is all right with me. I think your question also implies that Mr. Yeagley is considering not enforcing the law.

I understand that those in the executive department take a firm oath to enforce all the laws. It is up to the Congress to pass the laws and up to the executive department to enforce the laws. If anyone wouldn't vigorously enforce the law, I think he would be subject to impeachment.

Mr. CULVER. To make it perfectly clear, Mr. Chairman, I am not trying to impugn Mr. Yeagley, who has enjoyed very admirable service to our Government, for any lack of willingness to enforce the law.

I wish him to comment on some of the counsel that the President received in 1950 when this subject was considered and wondered whether or not some of the problems that Mr. Yeagley's Department is presently experiencing in "enforcing the law" with regard to the Subversive Activities Control Board does not bear out very convincingly the very thing that President Truman made reference to in his veto message.

Mr. TUCK. I think it might be more in line with the situation if you would ask the gentleman whether or not he wrote the veto message.

Mr. WATSON. If the gentleman is in doubt as to the direct responses that Mr. Yeagley and Mr. Liebling gave to me in reference to these specific quotes—and I was very specific—if he is in doubt as to the accuracy of their statements and thinks perhaps that the CIA

and the Army and Navy and Air Force can better answer these questions, although I believe if they had had any complaints they would have registered them with the Department of Justice, I think the proper procedure would be to bring these various agencies in here and then get their direct testimony on it because he has already answered quite positively "no" in reference to all of these things.

Mr. CULVER. The only thing I am trying to suggest, Mr. Watson, is that if Mr. Yeagley does consider himself in a position to make a response to the questions you directed to him, that certainly responding to a hypothetical question concerning his posture on the recommendations regarding the veto message in 1950 I don't think is any reflection on his fine integrity or indeed the memory of one of the greatest Presidents we have had.

Mr. YEAGLEY. I naturally don't want to sit in judgment on any President. I don't want to completely duck the answer to your question, Congressman Culver. As I indicated in my earlier testimony, I think the law has had a good effect from the standpoint of the U.S. Government in relation to the Communist Party, the nature of its operation, the extent of its influence, and the number of its members.

As you have pointed out, we encountered constitutional difficulties in enforcing several of the provisions of the law. I was not in the Department when the veto message was written or issued, nor when the Attorney General prepared his recommendations, so that I can't help in that area.

Mr. CULVER. On this business about hurting the Communist Party, again I think we have had some discussion on that point before. But it seems to me that it has been of great value to the Communist Party to have the United States Government for 18 years before the Supreme Court, with a poor batting average, dramatically propagandizing to the world that the United States does not live up to the high example in the Bill of Rights and judicial due process, and so forth.

It seems to me that the leadership of the Communist Party in making a decision to vigorously combat legally every possible challenge to the statute are certainly not insensitive to the worldwide propaganda value of such an exercise and it seems to me that before the eyes of world opinion the United States can't say that this statute has necessarily put us in an attractive light.

The fact that some other governments have adopted far more stringent, far more narrow, far more sweeping statutes regarding internal security doesn't surprise me in the least.

What concerns me is whether or not the United States, the leader of the free world, whether or not the United States, who I think and I hope represents a standard to mankind in the area of individual freedom, can make an effort to reconcile the national security interest consistent with individual freedom in a much more refined way with less consequences to individual liberties.

So that it seems to me that the question here is with regard to how much it hurt the Communist Party. I can't see where, standing and viewed from their vantage point, this has been such a disastrous exercise to take the United States Government through the courts for 18 years and win most of the important substantive decisions.

Mr. TUCK. You have just made a long speech, and, if you have some questions, ask a question. He has already answered the question.

Mr. CULVER. I would like to hear his response to that.

Mr. TUCK. What did you ask? He has already answered and said that it not only has not helped the Communist Party, but hurt the Communist Party.

Mr. CULVER. He said that?

Mr. TUCK. He has answered the question and given the committee his opinion.

Mr. CULVER. I don't think that is exactly the sequence of events.

He has suggested that this has hurt the Communist Party more than it has helped it, without a great deal of elaboration other than the suggestion you made 2 weeks ago that there was a disclosure value in the Subversive Activities Control Board hearings. I have tried to suggest that possibly this assessment is not a valid one. And I would be interested in his response to my suggestion.

Mr. YEAGLEY. It is obviously a matter of personal opinion and judgment as to what the effect has been. I don't have any hesitancy at all in my own view that the disclosure that resulted from the evidence and the testimony at these proceedings was very useful. In reference to the constitutional problems, I might reiterate that the basic disclosure requirement of the law was upheld by the Supreme Court in its 1961 opinion.

It was our enforcement efforts in the face of fifth amendment claims later on in which we encountered the bulk of the trouble.

Mr. WATSON. In fact, Mr. Yeagley, if I may interject here, you have had a lot of constitutional problems to arise and difficulties to arise over the past few years, not only in relation to this, but as to many other acts; haven't you?

Mr. YEAGLEY. We have constitutional issues raised in practically all of the areas of security enforcement, whether criminal or civil, because we are of necessity in an area involving the first amendment and very frequently in an area involving the fifth amendment.

Mr. TUCK. As a matter of fact, the plan of the Communists is to raise a constitutional question wherever they can and at the same time they wish to destroy the Constitution of the United States and shatter our Bill of Rights; isn't that true?

Mr. YEAGLEY. Yes, sir.

Mr. TUCK. As I understand, both you and Mr. Liebling favor this bill within the limitations of the suggestions that you make; is that correct?

Mr. YEAGLEY. I am sorry. I didn't hear the question.

Mr. TUCK. I said, as I understand it, you favor the amendments which are proposed in this bill within the limitations of the suggestions which you have made?

Mr. YEAGLEY. Yes. I might mention one thing that bears on earlier testimony here and that is as to extending the screening program to defense facilities. I think in my testimony earlier I indicated, "assuming that the program is needed" or "assuming that it is desired by Defense," that we would make the following suggestions, or something to that effect, because we have not endeavored to assess the need for extending the program to defense facilities which Mr. Liebling said may involve 3,500.

Our comments largely in that area were an effort to suggest language or point our problems we saw from the legalistic standpoint.

Mr. WATSON. Mr. Chairman, since apparently much of the discussion is centered around the necessity under this act of divulging the names of informants and otherwise, Mr. Yeagley, could you give us a rough estimate of the number of informants, FBI or otherwise, who have had to be surfaced in order to implement this particular act over the past 18 years?

Mr. YEAGLEY. To do it now from memory would be a very loose and general figure. It would be well over 100, I suppose, but I wouldn't know right now the exact number.

Mr. WATSON. Of course, Mr. Yeagley, many of these same informants especially in the major case of the Communist Party were defected Communist Party members and were FBI informants who had already been previously exposed or surfaced in order for your Department to make the prosecutions under the Smith Act; is that not true?

Mr. YEAGLEY. Well, to some extent. I was thinking in terms of the informants that were released for the purposes of these particular cases. I said well in excess of 100. It may not be that many. Maybe it is roughly 100. I don't know.

Mr. WATSON. But many of them would have been already surfaced in order for you to prosecute under the Smith Act?

Mr. YEAGLEY. Some. You see, the problem there is that if they had been surfaced 2 years before, their value as witnesses is limited. We would still have to update their testimony to the time of filing the petition, or close to it.

We did use some of them I know. We used Louis Budenz in the *Communist Party* case and some others as experts. We tried to use them wherever we could for the very purpose of saving others.

Mr. WATSON. In fact, they were a large part of the prosecutions, under the Internal Security Act, of the Communist Party?

Mr. YEAGLEY. In the *Communist Party* case itself.

Mr. WATSON. That is a major one. May I make one final observation, and you might comment on it.

The purpose of informants is ultimately to either expose the operations of subversives or Communists or to prosecute them. It is not just merely to have someone watching somebody all the time and for the Justice Department to do nothing about it ultimately. Isn't the basic purpose of informants to get information in order that a case might be prosecuted?

Mr. YEAGLEY. That observation might be true from my standpoint, but I am not so sure that it is from the standpoint of the FBI. As far as they are concerned, it is basically an intelligence operation. They primarily want to have the intelligence of what is going on, how extensive the activity, and secondarily to determine what can or should be done about it.

Mr. WATSON. Finally, we can conclude from Mr. Hoover's earlier testimony in never complaining about the operations of the Internal Security Act that this matter of surfacing informants has not presented any particular problem to him?

Mr. YEAGLEY. I wouldn't speak for Mr. Hoover in that regard. I think the facts speak for themselves. I do know what he has testified to, as you have indicated, but of course I do know, too, that we have had some problems of how many informants to use and which ones.

Mr. CULVER. I didn't hear the last.

Mr. YEAGLEY. We have had, of course, in the past some problems of how many informants to use and which ones should be used, but I should note the Bureau has been most cooperative in producing informants for our lawyers to interview.

Pursuant to Congressman Willis' request, I submit herewith a letter from the Department of Justice expressing the Department's views on H.R. 15828.

Mr. TUCK. The letter will be inserted in the record at this point.

We thank you, gentlemen.

(The letter dated May 20, 1968, follows:)

DEPARTMENT OF JUSTICE,
Washington, May 20, 1968.

HON. EDWIN E. WILLIS,
Chairman, Committee on Un-American Activities,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 15828 designed to strengthen the internal security of the United States.

Since the proposed legislation to be cited as the "Internal Security Act of 1968" embodies several distinct amendments to the United States Criminal Code (Title 18 U.S.C.) and the Subversive Activities Control Act of 1950, as amended (Title 50, U.S.C., Section 781 et seq.), we shall comment seriatim upon each section to facilitate our discussion of this rather broad Bill.

Title I of H.R. 15828 is composed of amendments to the national security provisions of Title 18 of the United States Criminal Code.

Section 101(a) of the Bill would amend the definition of "war premises" as found in Section 2151 of Title 18, U.S.C., dealing with the crime of sabotage. Under existing law, the term "war premises" includes all buildings, grounds, etc., wherein war material is being produced, manufactured, stored, mined, etc. Under the amended definition, "war premises" would include those premises wherein war material is being "or may be produced, manufactured, . . .". Subsection (b) would amend the definition of "national defense premises" to include all buildings, grounds, mines or other places wherein national defense material is being "or may be produced, manufactured, etc."

The foregoing amendments to the existing law would substantially enlarge the scope of the sabotage statutes. If enacted, they would require the Federal Bureau of Investigation to investigate charges of "sabotage" whenever an industrial accident occurred in almost any industrial facility, since such facilities could probably produce "war material" under the broad definition afforded that term by Section 2151 of the sabotage statute.

In addition to the investigative and consequent enforcement problems indicated above, there also appears to be a constitutional question as to vagueness in the proposed amendment. For it is not clear whether the amendment is intended to cover all premises wherein it is *possible* to produce, store, etc., war materials or is intended to apply only to those premises planned or intended to be so utilized. In light of the broad scope of the existing sabotage statutes defining premises, wherein war material and national-defense material is being produced, manufactured, stored, etc., there would appear to be little reason to doubt that the amendment would apply to all premises in which it is possible to produce or store such materials.

Therefore, we are opposed to the enactment of Section 101(a) and 101(b) insofar as they seek to expand the definition of the terms "war premises" and "national-defense premises."

Section 101(a) and (b) would also amend the existing phrase "or other installations of the Armed Forces of the United States, or any associate nation," as contained in Section 2151 to read as follows "or other military or naval stations of the United States, or any associate nation." Inasmuch as the existing language is broader in scope than the proposed change, we are opposed to its enactment.

Section 102(a) of the Bill would amend the initial provision of the Smith Act, (Title 18, U.S.C., Section 2385), which punishes the knowing or willful advocacy or teaching of the duty or desirability of overthrowing the Federal Government or

the government of any state by force or violence, by adding at the outset the phrase, "Without regard to the immediate provable effect of such action".

While the meaning of this proposed amendment to the Smith Act is not entirely clear, it would appear to be an attempt to escape or mitigate the consequences of the "clear and present danger test" or its equivalent. This test, as you may know, has been applied by the Supreme Court in practically all cases involving the punishment or curtailment of speech commencing with *Schenck* v. *United States*, 249 U.S. 47. The "clear and present danger" test was utilized in the first Smith Act case involving the top echelon of the Communist Party, *Dennis* v. *United States*, 341 U.S. 494, and in *Yates* v. *United States*, 354 U.S. 298. Chief Justice Vinson stated in *Dennis*, "The doctrine that there must be a clear and present danger of a substantive evil that Congress has a right to prevent is a judicial rule to be applied as a matter of law by the courts" (341 U.S. 513).

In the cases involving freedom of speech such as *Schenck* and *Dennis*, the Supreme Court has imposed the "clear and present danger test," or its legal equivalent, as a means of determining whether the words spoken or written are outside of the area of constitutionally protected speech, as guaranteed by the First Amendment to the Constitution. To circumscribe or eliminate the "clear and present danger test," as is apparently attempted in the proposed amendment, would appear to constitute an attempt to eliminate the very mechanism the courts have created to assist them in determining what speech has gone beyond the protection of the First Amendment. We are therefore opposed to the enactment of Section 102(a) of the Bill.

Section 102(b) of the Bill would further amend Section 2385 of Title 18, United States Code, by inserting immediately after the first paragraph thereof a new paragraph:

> Whoever with intent to cause the overthrow or destruction of any such government, in any way or by any means advocates, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying any such government by force or violence; . . .

The foregoing is an apparent attempt to bring the Smith Act expressly into conformity with the holding of the Supreme Court in *Dennis* v. *United States*, 341 U.S. 494, 499. The *Dennis* case held that even though the Smith Act in paragraphs one and three did not expressly require the specific intent to cause the violent overthrow of the government, it was the purpose of Congress to require such an intent and that the structure and purpose of the statute demanded the inclusion of intent as an element of the crime. The amendment, however, would have no effect on paragraphs one and three since intent has been judicially declared as an element of the crime in these sections. Since this amendment does not appear to meet any genuine need in the Smith Act, we are consequently opposed to its enactment.

Section 102(c) amends the last paragraph of Section 2385 to provide that the term "organize" with respect to any society, group, or assembly of persons, includes encouraging recruitment or the recruiting of new and additional members and the forming, regrouping, or expansion of new or existing units, clubs, classes, or sections of any such society, group, or assembly of persons.

The final paragraph in the Smith Act defining the terms "organize" and "organizes" was amended by Congress in 1962 to obviate the effect of the decision of the Supreme Court in the *Yates* case, *supra*, where the Court held that the term "organize" meant the organization of the Communist Party, as such, and not the recruiting of new members and the forming of new groups. The new amendment would delete the word "organizes," and adds the phrase "encouraging recruitment" and the words "recruiting of new or additional members."

While the proposed amendment would not appear to alter the purpose and the effect of the existing provision of Section 2385, except in a minor way, we have no objection to its enactment, if deemed desirable.

Section 103 would amend Chapter 115 of Title 18 of the United States Code dealing with treason, sedition and subversive activities by adding a new section 2392. The new section would punish anyone owing allegiance to the United States who gives aid or comfort to an adversary of the United States by an overt act within the United States or elsewhere. The term "adversary" of the United States would include a foreign nation or armed group which is engaged in open hostilities against this country or with which the Armed Forces of the United States are engaged in open hostilities.

While it would seem constitutionally permissible to punish citizens who, for example, furnish financial or other material aid to the Viet Cong or North Vietnam or to similar adversaries, the amendment in question appears to resemble the Treason Statute, (Title 18, U.S.C., Section 2381), and would consequently be subject to the same constitutionally imposed evidentiary criteria required by that statute. Under Article III, Section 3 of the Constitution defining treason, the Government is required to allege specific overt acts of treason upon the part of the accused and to prove each of these acts by the testimony of two eyewitnesses to the particular act. Treason requires both adherence to the enemy and giving aid and comfort to that enemy.

Section 2392 utilizes the terms of the treason statute, including "aid" or "comfort" and "overt act" but leaves out the term "adheres" and seeks to expand the term "enemy" to include, in addition to foreign nations, armed groups engaged in open hostilities against the United States.

The proposed amendment, in our view, bears too close a resemblance to the treason statute and might well appear to the judiciary to involve an attempt to, in effect, try a person for treason without meeting the constitutional standards of proof for such a conviction. In addition to the constitutional problems raised by this proposal, the actions made punishable are in substantial measure proscribed by the Foreign Assets Control regulations issued pursuant to the Trading With the Enemy Act (31 C.F.R. 500.01, *et seq.*—50 App. U.S.C., Section 5(b)).

In view of the foregoing reasons we are opposed to the enactment of Section 103 of H.R. 15828.

Title II of H.R. 15828 involves amendments to the Internal Security Act of 1950 (50 U.S.C., Section 781, *et seq.*).

Section 201 of the Bill would amend Section 12 of the Subversive Activities Control Act by extending the term of a member of the Subversive Activities Control Board to seven years. Section 201 also makes the Chairman of the Board the chief executive and administrative officer with respect to personnel and Board funds. We have no objection to its enactment, if desired.

Section 202 amends Section 14 of the Subversive Activities Control Act, entitled "Judicial Review," by adding a new sentence at the end of subsection (a), "In any appeal or review pursuant to this subsection, the sole question to be decided would be the validity of the decision and order of the Board at the time of its issuance." This proposal would limit appellate review of Board orders to the conditions existing at the time of the order and not at the time of appellate review and could eliminate the remand of a Board case for "staleness," where such "staleness" resulted from appellate delays. We have no objection to the enactment of Section 202 of the Bill.

Section 203 is a finding by the Congress that it is per se a clear and present danger to the national security to have employed in a defense facility individuals who wilfully and knowingly remain members of a communist organization more than 90 days following an order of the Subversive Activities Control Board against such organization.

This is an addition to present law, and we have no objection to the enactment of such legislation.

Section 204 would amend Section 5 of the Subversive Activities Control Act by inserting immediately after subsection (a), a new subsection (b). Subsection (b)(1)(A) would make it unlawful for any member of a Communist organization, knowing or having reasonable grounds for believing such an organization to be a Communist organization, in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such an organization. Subsection (B) makes it unlawful for any individual who is an active member of an organization which he knows to have been the subject of a final order by the Subversive Activities Control Board, determining it to be a Communist-action organization and having subscribed or assented to any unlawful objective of such organization, to engage in any employment which may affect the national security of the United States in a facility which is designated as a defense facility.

Subsection (C) forbids any officer or employee of a defense facility from contributing funds or services to a Communist organization, knowing or having reason to believe that it was such an organization, or from advising, counseling or urging any person, knowing or believing that such a person is a member of a Communist organization, to perform or omit to perform any act if such an act or omission would constitute a violation of subparagraphs (A) and (B).

Section 2 of the proposed amendment defines the term Communist-action organization as used in the subsection in substantially the same language as that contained in Section 782(3)(a) of Title 50, U.S.C. Section 204 also defines the term Communist organization to include a Communist-action organization and any organization in the United States which is substantially directed, dominated or controlled by a Communist-action organization or is substantially directed, dominated or controlled by one or more members of a Communist-action organization and operated primarily for the purpose of giving aid and support to a Communist-action organization.

With respect to the employment of Communists in defense facilities, Section 204 would appear to be subject to the same objection the Supreme Court found in the case of *United States* v. *Robel*, 389 U.S. 258, in that there is no need to establish that the individual poses the threat the Government seeks to prevent.

In the *Robel* case, the Supreme Court held that Section 5(a)(1)(D) of the Internal Security Act established guilt by association alone, without any need to establish that an individual's association posed the threat feared by the Government in proscribing it. The Court also pointed out that the statute made it irrelevant whether an individual might be a passive or inactive member of an organization designated by the Board, or that he may be unaware of the organization's unlawful aims, or disagree with those unlawful aims.

The proposed amendment seeks to meet the objections which the Supreme Court noted with respect to Section 5(a)(1)(D) in the *Robel* case. Thus, the proposed amendment would prohibit defense facility employment of those members of Communist-action organizations who are active members and who subscribe or assent to some unlawful objective of the organization. It is noted that the term "any unlawful objective" of the amendment is quite broad and is not confined to the commission of acts of sabotage or related subversive acts. Although we support the purposes of Section 204, we note that the measure of proof required under this amendment would be quite difficult to obtain.

In any event, there are substantial questions as to whether the proposed amendment would meet the criteria of constitutionality expressed by the Supreme Court in the *Robel* case and related cases dealing with the imposition of criminal sanctions as a result of a person's membership in the Communist Party. Consequently, we object to the enactment of Section 204 as presently drafted.

Title III of the Bill deals with reprisals against congressional witnesses.

Section 301 would amend Section 1505 of Title 18, U.S.C. by making it a felony for any official of the Executive Branch of the Government to cause an employee to be demoted, suspended, dismissed, retired or otherwise disciplined as a result of his attendance at any inquiry being held by a committee of Congress or as a result of his testimony before any committee unless such testimony discloses misconduct on his part. Adverse action taken against an employee within a year of his attendance or testimony shall be considered *prima facie* evidence that such action was taken as a result of the employee's testimony.

Section 301 would also amend Section 3486 of Title 18, U.S.C., which deals with immunity as a result of incriminating testimony by adding a new subsection (e). This provision would prevent the demotion, suspension, etc., of any witness who is a member of the Armed Forces or an officer or employee of the Executive Branch as a result of testifying or furnishing official papers or records before a congressional committee, unless such testimony is given or official papers or records are produced in violation of law or they disclosed misconduct on the part of the witness.

Section 302 forbids any reprisal by the Executive Branch through its officials in any manner or by any means not prohibited by Section 1505 of Title 18, U.S.C., against any witness who testifies before a congressional committee or any officer or employee of the Executive Branch who furnishes any congressional committee, chairman or member thereof, any information or any document disclosing any wrongdoing or breach of security in such agency. Persons who violate this section by ordering or initiating such a reprisal or urging, advising or attempting to bring it about are punishable by imprisonment not to exceed one year or a fine not to exceed $1,000. It is noted that the punishment for violating Section 301 consists of imprisonment of not more than five years or a fine of not more than $5,000, or both. The penalty under Section 301 appears excessive, particularly in view of the one year penalty under Section 302 of the Bill.

In our view these sections present several problems. First, it might be noted that the provision regarding attendance at hearings is extremely broad and is not limited to attendance upon congressional request or at hearings relating to

the employees official duties. Read literally, it would prohibit charging an employee leave without pay for attending any hearing which may interest him without taking annual leave and without agency permission. We doubt that the provision is intended to permit federal employees to be spectators at hearings whenever they wish and regardless of their duties.

Section 301 also raises a presumption which seems somewhat unreasonable, for there is no necessary connection between disciplinary action and the appearance within a year of an employee at a congressional hearing. The bill would even seem to apply even though the preliminary disciplinary proceedings were commenced prior to the testimony if the disciplinary action should follow the testimony. In our view, this provision would adversely affect effective personnel management.

Similarly, the prohibition on disciplinary action against employees furnishing records to congressional committees may have a serious effect on records management. If an agency is unable to regulate the custody and care of its records, it will be unable to keep any systematic filing system. If any employee is permitted to take any records without permission and furnish them to committees, whether or not requested, agencies will be unable to keep track of them or to furnish them when formally requested by courts, the Congress or other agencies.

Furthermore, Section 301(e), pertaining to the production of documents, does not exempt material classified pursuant to Executive Order 10501 and such legislation would also effectively prohibit administrative or criminal action against any Government employee who may unlawfully disclose or comprise information in violation of the espionage statutes and the Atomic Energy Act. It is manifest that the protection of classified information dictates that its disclosure be made only when authorized by the proper authority.

We strongly oppose enactment of these proposals.

Section 303 of the Bill would require the courts to give preference to criminal proceedings in cases under Title 18, Chapter 37 (espionage), Chapter 105 (sabotage) and Chapter 115 (treason, sedition, etc.) as well as prosecutions under the Atomic Energy Act of 1946.

Our experience in the prosecution of cases involving subversive activities has not been such as to indicate a necessity for the enactment of Section 303. For many of the enumerated offenses requiring acceleration are capital offenses for which bail is not normally granted. In those instances where bail is granted, it is generally of a high amount and more often than not the defendant remains incarcerated. Since the defendant is jailed the courts give priority to such cases. In the circumstances, we perceive no need for this provision.

The Bureau of the Budget has advised that there is not objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

/s/ J. Walter Yeagley,
J. Walter Yeagley,
Assistant Attorney General.

STATEMENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. Tuck. In response to the committee's request, the AFL–CIO has by letter dated May 17, 1968, through its associate general counsel, submitted its views on H.R. 15626. Without objection, I therefore ask that the letter of views of the AFL–CIO be included in the record at this point.

(The letter follows:)

American Federation of Labor
and Congress of Industrial Organizations,
Washington, D.C., May 17, 1968.

The Honorable Edwin E. Willis,
Chairman, Committee on Un-American Activities,
House of Representatives, Washington, D.C.

Re: H.R. 15626, To Amend the Subversive Activities Control Act of 1950.

Dear Congressman Willis: In response to the Committee's invitation, the American Federation of Labor and Congress of Industrial Organizations (AFL–

CIO) takes this opportunity to submit a statement of its views on H.R. 15626, and to request that this statement be made part of the record of the hearings on said bill. We recognize that the Committee has been favored with a number of comprehensive and meticulous section-by-section analyses of this proposed legislation. This statement will therefore be brief and will deal mainly with the Federation's views on the basic thrust of the bill.

The AFL–CIO's relentless opposition to Communism, and its sympathetic appreciation of the security problems caused by Communist subversive activities is beyond question and is, we are sure, well known to this Committee. Thus the ultimate goal of H.R. 15626 is one with which the Federation is in accord. Nevertheless, the AFL–CIO cannot support the bill in its present form. It cannot do so because H.R. 15626 is overbroad in two respects—in the number of workingmen and women it covers and in the criteria for denying clearance that it sets out. The AFL–CIO's Second Constitutional Convention, held in 1957, set out the essence of organized labor objections to overbroad security programs in the following terms:

"The American labor movement has a great heritage as a foremost champion of the preservation and extension of individual civil liberties in our land. We rededicate ourselves to the task of keeping inviolate the fundamental freedoms guaranteed to every American by the Constitution and the Bill of Rights.

"The AFL–CIO stands not only as a bastion of freedom but also as a bulwark against the threat of International Communism to our way of life and to the entire free world. In the face of this ever-present danger there is a need to maintain an effective security system against espionage and subversive activities by our totalitarian foes. This danger requires the maintenance of effective counterintelligence for vigorous enforcement of criminal laws and for an effective security system administered with full safeguards of the individual liberties guaranteed by our laws."

* * * * * * *

"RESOLVED, that the AFL–CIO welcomes the recent decisions of the U.S. Supreme Court dealing with loyalty and security. These decisions served to strengthen the individual liberties of all Americans.

"Properly, the application of the necessary security measures should be limited to persons having access to secret or highly classified information affecting national security. To go beyond this limit and to subject to security screening thousands of individuals employed in defense facilities and in the government establishments but having no access to security information is not only unnecessary but objectionable. We, therefore, are opposed to legislative proposals which would apply security screening wholesale to employees in such plants, establishments or facilities without regard to the access of such employees to top-secret and secret security information.

"We reaffirm our determination to preserve and defend American democracy from any and all enemies, within or without.

"We call on Congress and the public to be alert in opposition to any infringements of civil liberties in the administration of the security programs and in the conduct of congressional investigations."

The Federation has never deviated from this view and the intervening years have provided ample support for its position.

The reach of H.R. 15626 is such that it could cover all airline and railroad employees, a very high percentage of those in the aerospace, utility and educational fields, and a significant number of the employees engaged in general manufacturing and mining. The vast scope of the program threatens its efficient functioning. The volume of the work it entails tends to require cursory checks which would not be a source of discomfort to the dedicated subversive who has planned his life with the end in view of committing acts of sabotage. And the very size and scope of the assigned task is sure to engender bureaucratic errors, omissions and oversights which could make it possible for a dedicated subversive to slip through the security net and gain access to truly secret information. There is, in addition, a further potential loss to the smooth and efficient functioning of the government inherent in this bill. The United States needs skilled and intelligent people to man its defense establishment and to work in its defense industries. Many of the most able of these will assuredly look elsewhere for employment rather than run the gauntlet of checks provided for in H.R. 15626.

The authorization to run checks on so many workers also creates a serious and unwarranted threat to the right of privacy. As Mr. Justice Brandeis stated in his famous dissent in *Olmstead* v. *United States*, 277 U.S. 438, 478, which has

since carried the day, the right of privacy is "the most comprehensive of rights and the right most valued by civilized men." See also e.g. *Warden* v. *Hayden*, 387 U.S. 294. The creation of voluminous files of "raw" unanalyzed data concerning the intimate details of the lives and beliefs of a significant proportion of our population is a specter so incompatible with the basic tenants of a free society that it should incline this Committee to a sober reconsideration of the scope of this bill. The right of privacy is not, of course, an absolute. But intrusions into the private lives of American citizens should be permitted only where the expected benefits can be shown to be of a very high order. No such showing has or can be made here. Today the Communist movements appeal to the working men and women of this country is at its nadir. For this reason we are not aware of any information which would suggest that sabotage has been a problem of any proportion in the prosecution of the war in Vietnam. Thus H.R. 15626 takes insufficient account of this fact that the period since 1950 has proved a point that should never have been in doubt—that the vigilance, good sense, innate loyalty of the American working man provides the firmest possible defense against Communist subversion. Whatever the felt needs of the late 40's and early 50's might have been recent history should give us the courage to free ourselves from the excesses of that period and to return to our historic traditions in which we place our trust in the responsibility and loyalty of free men.

The threat to the right of privacy we have noted is intensified by the fact that H.R. 15626 requires the perpetuation, and probable enlargement, of a bureaucracy charged with the monitoring of the private lives and thoughts of American citizens—charged in other words with a task that aligns the Federal Government far too closely with the government of Big Brother in Orwell's *1984*. The Statement of Joseph J. Liebling, Director for Security Policy of the Department of Defense, indicates that this bureauracy comprises over 11,000 people and spends over $45 million per year. A Congress as concerned with economy as the present one, which is seriously considering cutting $6 billion from the Federal Budget should, we submit, cut down the size of this swollen security force, whose very existence is a danger to our free institutions, not enlarge it.

The problems we have noted thus far are exacerbated by the excessively broad grounds for disqualification from employment set out in H.R. 15626. In this regard, Sections 5A(d) 15–17 are the most objectionable. The notion that a security force should inquire into the mental health, alcoholic intake and sexual habits of railroad conductors, utility workers, etc., is an ominous one in a society built on freedom and respect for the inviolate nature of the individual. Consideration of the processes that would have to be used to secure reliable evidence as to such matters is enough to require that these provisions should be reconsidered. In addition, it hardly appears self-evident that it is proper to place in the hands of the Executive Department the power to bar every citizen who has relatives in Russia, Eastern Europe, or China from such a high proportion of the blue collar jobs available in this country. Yet that is the precise effect of Section 5A(d)(10). And while the AFL–CIO and the vast majority of its membership has given unstinting support to the Administration's prosecution of the war in Vietnam, it seems to us to be unsound to place the job rights of those who oppose that policy peacefully, and out of a sense of loyalty, in jeopardy. Yet that is a probable effect of Section 5A(d)(3). In addition to these specific points, which could be expanded, there is another danger inherent in Section 5A(d). It gives the Executive a broad discretion which could be used as a cloak to further objectives other than the exclusion of potential saboteurs and subversives from defense positions. This discretion could, for example, be used as a mechanism to allow anti-union employers to rid themselves of workers who hold the "subversive" idea that representation by a labor union is a good idea.

The overbreadth of the bill is not the only reason why the AFL–CIO cannot support H.R. 15626. The Federation also objects to the fact that the proposed legislation does not go far enough in assuring fair procedures to those who wish to challenge an adverse security determination. The exceptions contained in Section 5A(k) to the right to cross-examine witnesses and to secure relevant documentary material are of such potential magnitude that they threaten to engulf those rights. We submit that the minimum improvement that is necessary is to provide that the hearing officer in charge of a particular case, rather than those who have investigated and decided to prosecute the matter, decide whether the national security requires deviation from these essential rights. Moreover, the bill should make it clear that a refusal to produce a witness under 5(a)(k)(B) or (C) should be sustained only if the informant is an undercover agent. The present wording is far too vague. Since the hearing officer will,

no doubt, have a security clearance, it is plain that this proposal meets the needs of national security. In addition, as a further safeguard, the hearing officer could be furnished with the necessary information to make those decisions *in camera* where necessary. The job of investigators and prosecutors is to investigate and prosecute. Their proper tasks give them a natural interest in secrecy that is incompatible with a proper judicial approach to the delicate question of when a source of information or documentary evidence should be revealed. The present bill, therefore, unfairly weights the scales against the accused and is in contravention of one of the basic postulates of our legal heritage—that an accused is presumed innocent until proven guilty and should, therefore, have an unfettered opportunity to make his defense.

To this point we have addressed ourselves to an attempt to demonstrate that portions of H.R. 15626 are unsound and unwise. We have done so because we know that this Committee wishes to draft a bill that is sound and practical. But we would be derelict if we did not point out that the bill as presently drafted is open to objection, not only for the reasons we have given, but also because of its failure to observe the rigorous Constitutional limitations imposed by the First Amendment on Congressional action in this sphere. We note only the most salient points. The recent decision in *United States* v. *Robel*, 389 U.S. 258, provides weighty support for the view that it is beyond Congress' power to enact security legislation of this type which covers those who do not occupy or wish to occupy "sensitive" positions. *Robel* also stands for the proposition that associational activity can be the basis of a disability only if the person in question is an active member of the association, has knowledge of the illegal goals of the group and has a specific intent to further those goals, see also *Elfbrandt* v. *Russell*, 384 U.S. 11, 17. The bill under consideration does not meet this limitation. Nor as is attempted here can disabilities be imposed because of the invocation of the Fifth Amendment, see *Spevack* v. *Klein*, 385 U.S. 511. And as the Department of Justice has pointed out, Sections 5A(d)(1)(c) and 5A(e) cannot stand in light of *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123. As other statements which have been submitted make clear this brief list is merely representative and does not exhaust by any means the constitutional infirmities contained in H.R. 15626.

Respectfully submitted,

/s/ Thomas E. Harris,
THOMAS E. HARRIS,
Associate General Counsel.

Mr. TUCK. If there are no further questions, the committee will adjourn to come together again at the call of the chairman.

(Whereupon, at 11:35 a.m., Wednesday, May 22, 1968, the subcommittee recessed, to reconvene at the call of the Chair.)

Following the hearings, a proposed revision of the bill H.R. 15626 was drafted for consideration by the committee and discussed with representatives of the Department of Defense. The revision follows:

A BILL

To amend the Internal Security Act of 1950 to authorize the Federal Government to deny employment in defense facilities to certain individuals, to protect classified information released to United States industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Internal Security Act of 1950 is amended by adding at the end thereof the following new title:

"TITLE IV—DEFENSE FACILITIES AND INDUSTRIAL SECURITY

"SEC. 401. This title may be cited as the 'Defense Facilities and Industrial Security Act of 1968'.

"DEFINITIONS

"SEC. 402. For the purposes of this title—

"(1) The term 'facility' has the meaning assigned to such term by paragraph (7) of section 3, and the term 'defense facility' means any facility designated as such under section 403.

"(2) The term 'classified information' includes any information, regardless of country of origin, which for reasons of the national defense or security is specifically designated pursuant to law or Executive order by an agency of the United States Government for limited or restricted dissemination or distribution. The term 'classified information' also

includes any project, production, or service which is classified.

"(3) The term 'classified', as applied to a project, production, or service, means a project, production, or service to which access is restricted, or information concerning which is for restricted dissemination or distribution, as specified pursuant to law or Executive order by an agency of the United States Government for reasons of the national defense or security.

"(4) The term 'sensitive' means, with respect to a position, place, or area of employment, an individual's special and enlarged opportunity or capacity, by reason of his position, place, or area of employment, to commit, or to aid or abet another to commit, an act of sabotage, espionage, or any other act which would impair the military effectiveness of the United States, or the production and development of essential materials and services of importance to the national defense, or would endanger the security of military personnel or of classified information. The term 'sensitive' means, with respect to information, such information as is classified; with respect to a project, production, or services, such projects, production, or services as are classified, or any other project, production, or service which if sabotaged, damaged, or obstructed would impair the military effectiveness of the United States, or the production or development of essen-

tial materials or services of importance to the national defense, or would endanger the securty of military personnel.

"(5) The term 'act of subversion' means any unauthorized disclosure of classified information, or any act, omission to act, conspiracy, or solicitation to commit any act or omission which causes or would tend to cause damage or injury to any facility or its production and services, when committed with the intent to impair the national defense, or to advantage a foreign power, or to prejudice the security of the United States against its enemies, foreign or domestic, or to effect any plan, tactic, or strategy of any subversive organization.

"(6) The term 'organization' includes any group, society, association, or legal entity, or any chapter, branch, unit, or affiliate thereof, or any combination of two or more individuals associated together for joint or concerted action on any subject or subjects, whether incorporated or not.

"(7) The term 'subversive organization' means—

"(A) any organization described in section 406(a), and

"(B) any other organization, whether or not described as Communist, Marxist, Marxist-Leninist, revolutionary socialist, anarchist, nihilist, Fascist, Nazi, totalitarian, or racist, which has as a purpose, or which advocates or teaches the necessity, propriety, or desirability of,

the unlawful use of force or violence, the commission of crime, or the use of other unlawful means (i) to overthrow, destroy, or alter the form or system of government of the United States or of any State, possession, territory, or political subdivision thereof, or (ii) to compel or restrain governmental action by any unit or subdivision of government, in any of its branches, legislative, executive, or judicial, in order to effect any political, economic, social, or policy change.

"(8) The term 'advocate' means to urge or recommend as a policy, rule, or principle to be translated into action immediately or at a future time as soon as circumstances permit.

"(9) The term 'teach' means to indoctrinate as a program for winning adherents and as a policy, rule, or principle to be translated into action immediately or at a future time or as soon as circumstances permit.

"(10) The term 'association', when applied to an individual's conduct, means an individual's activities, or other objective manifestation of conduct, in relation to another person or organization.

"(11) The terms 'affiliated' and 'affiliate', when applied to an individual's relation to an organization, have the meaning assigned to such terms by paragraph (17) of section 3 of title I of this Act.

"(12) The terms 'sabotage', 'espionage', sedition', 'insurrection', and 'treason' mean those offenses punishable as such under Federal or State law.

"(13) The terms 'saboteur', 'spy', 'seditionist', 'insurrectionist', and 'traitor' mean those persons who commit, conspire to commit, or solicit another to commit, the offenses referred to in paragraph (12) of this section, of which the terms are descriptive.

"(14) The term 'sleeper' means a member of an organization who, at the request or recommendation of any officer or leader of such organization, or pursuant to a directive or recommendation of such organization, and for the purpose of accomplishing any plan, tactic, or strategy of such organization, conceals or endeavors to conceal his membership, whether for a certain or uncertain period, by ceasing to engage in any public activity of, or any contact or association with, the organization that would disclose or tend to disclose to nonmembers his identity as a member of such organization.

"DESIGNATION OF DEFENSE FACILITIES

"SEC. 403. (a) Under such regulations (including procedures for administrative review) as shall be prescribed by the President, the Secretary of Defense shall designate as a defense facility any facility which is occupied or engaged, in whole or in part, as a contractor or subcontractor, in the ex-

ecution of any contract with or for the United States for the rendering of goods or services as follows:

"(1) any classified project, production, or service for military use or which he determines to be of military significance;

"(2) the fabrication, production, or assembly, for military use, of weapons, weapons or defense systems, missiles, rockets, missile and rocket propellants, projectiles, ammunition, explosives, aircraft, vessels, armed vehicles, and specialized vehicles;

"(3) the fabrication, production, or assembly, for space use or exploration, of missiles, rockets, missile and rocket propellants, and specialized vehicles or craft, which he determines to be of significance to the defense of the United States; or

"(4) the subassemblies or components of any of the foregoing items.

The Secretary shall promptly notify the management, and any labor organization (as that term is defined in section 2(5) of the National Labor Management Relations Act, 1947, as amended), of any facility which he proposes to designate as a defense facility, of the opportunity of the management and such labor organization to oppose such designation by written objection and oral argument. In the absence of objection to the proposed designation or upon final

determination in favor of such designation, the Secretary of Defense shall immediately cause the management to post (in such place or places within or upon the premises of such facility as shall be likely to give knowledge or notice of such designation to all employees of, and to all applicants for employment in, such facility) a conspicuous notice of such designation of such facility. Nothing in this section shall be construed to require the Secretary to disclose information which he determines will impair the national interest or security. Upon the request of the Secretary, the management of any facility so designated shall deliver to each employee of, or applicant for employment in, such facility (A) a written statement informing him that such facility has been designated as a defense facility under this section, that the prohibitions of section 5(a)(2) of this Act are applicable to employment in such facility, and of the identity of organizations determined by final order of the Subversive Activities Control Board to be Communist-action organizations, and (B) a copy of sections 2 and 3 of this Act.

"(b) The Congress of the United States hereby finds that the production and services described in subsection (a), paragraphs (1) through (4) of this section, are sensitive. For the purposes of sections 5(a)(2) and 404(a) of this Act, the Secretary of Defense shall, with respect to such production and services, designate the positions, places, and

areas of employment in any defense facility which he determines to be sensitive.

"AUTHORITY TO DENY ACCESS TO DEFENSE FACILITIES AND CLASSIFIED INFORMATION

"SEC. 404. (a) The President is authorized to institute such measures and issue such regulations, standards, restrictions, and safeguards as may be necessary to protect defense facilities against sabotage, espionage, or any act of subversion, and, with respect to any position, place, or area of employment determined by the Secretary of Defense to be sensitive pursuant to section 403(b), to deny employment therein to any person on the basis of findings that such person's employment is not clearly consistent with the national interest.

"(b) The President is authorized to institute such measures and issue such regulations, standards, restrictions, and safeguards as may be necessary to protect against unauthorized disclosure classified information released to or within any facility located in the United States, including procedures for determining eligibility and authorization for access to classified information so released, and to deny such access authorization on the basis of findings that the granting or continuing of such access authorization is not clearly consistent with the national interest.

"(c) Where a reasonable doubt exists that any per-

son's employment in a defense facility or access to classified information is consistent with the security of the production, services, or information to be safeguarded pursuant to the provisions of this title, such person's employment or access to classified information may be denied, suspended, or revoked. Such doubt may arise only after consideration of all relevant and material evidence adduced, and based upon affirmative findings supported by substantial evidence. In making a determination as to such person's eligibility or authorization for such employment in a defense facility or access to classified information, as well as a determination of the scope of the investigation to be made for the purposes of this title, consideration shall be given to the nature and position of the employment, the level of clearance sought, and whether or not the employment involves access to classified information.

"(d) The President may establish criteria and authorize inquiries and investigations concerning an individual or organization, as well as inquiries directed to an individual regarding his present or past membership in, or affiliation or association with, any subversive organization, and such other activities, behavior, associations, facts, and conditions, past or present, which are relevant and material to any determination to be made under the provisions of this title.

"(e) Under such regulations as the President may prescribe, conditional employment without access to classified information may be tendered any individual in any facility pending determination of such individual's eligibility or authorization for any employment which is subject to the provisions of this title.

"(f) The President may perform any function vested in him by this title unless otherwise expressly stated, through or with the aid of such officers or agencies as he may designate.

"RESTRICTED AREAS

"SEC. 405. For the further safeguarding of defense facilities, or parts thereof, occupied or engaged in the production and services described in subsection (a) of section 403, and of the release of classified information to any facility, the President may, under such regulations as he shall prescribe, authorize the Secretary of Defense, or his designee for such purpose, to establish area restrictions and prohibitions limiting access to any such facilities and areas adjacent thereto against intrusion by unauthorized persons. Notice of such restrictions or prohibitions shall be posted within or upon the premises of such facility at such places as shall be likely to give notice of such restrictions or prohibitions, and shall include a notice of the penalty provided by this section for violation thereof. Whoever, contrary to the re-

strictions or prohibitions applicable to any such area, willfully enters, or remains in, any such restricted or prohibited area shall be fined not more than $500 or imprisoned not more than six months, or both.

"SUBJECTS OF INQUIRY AND CRITERIA

"SEC. 406. (a) For the purposes of determining any individual's eligibility for employment in a sensitive position, place, or area of employment in any defense facility or for access to classified information, the authority of the President under subsection (d) of section 404 includes, but shall not be limited to, inquiries and criteria regarding such individual's past or present membership in, or affiliation or association with, one or more of the following categories of organizations:

"(1) Any organization which, by final order of the Subversive Activities Control Board, has been determined to be a 'Communist organization' as defined in paragraph (5) of section 3 of this Act.

"(2) Any organization, foreign or domestic, which has been organized or utilized for the purpose of advancing the objectives of the Communist movement or for the purposes of establishing any form of Communist dictatorship in the United States or abroad.

"(3) Any organization, foreign or domestic, which advocates, aids or abets, or engages in, the giving of any money,

property, or thing, or the conduct of any activity, which is of aid, comfort, or assistance to any foreign government, group, or association engaged in armed conflict with the United States, under such circumstances that it is reasonable to infer that a purpose of such activity is to impede or interfere with the operation or success of the Armed Forces of the United States, or to advantage any foreign government, group, or association and to prejudice the interests of the United States.

"(4) Any organization, foreign or domestic, which advocates, counsels, aids or abets, or engages in, the violation of any Federal law related to the internal security of the United States or its defense against foreign aggression.

"(5) Any organization, foreign or domestic, which advocates, counsels, aids or abets, or engages in, the use of force and violence or other unlawful means for the purpose of altering the form or system of government of the United States or of any political subdivision, territory, or possession thereof, or for the purpose of compelling or restraining governmental action to effect any political, economic, or social change.

"(6) Any organization, organized or utilized by any foreign government, or by any foreign party, group, or association acting in the interest of any foreign government, for the purpose of (A) espionage, (B) sabotage, (C) obtaining

information relating to the defense of the United States or the protection of the national security, (D) impairing, hindering, or delaying the production of defense materials in the United States or in countries in defensive alliance with the United States, or (E) obstructing the execution of a defense treaty of the United States.

"(7) Any organization, foreign or domestic, affiliated with, or substantially dominated or controlled by, or acting in concert with, or in support of, any party, group, or association of the character described in the foregoing paragraphs of this subsection.

"(b) In determining the significance to be given, for the purposes of this section, to the organizational membership or associations of any individual, but with due regard to the prohibitions of section 5(a)(2) of this Act, consideration shall be given to—

"(1) the character and history of that organization;

"(2) the time during which such individual was a member of or affiliated or associated with such organization and, if such individual no longer is a member of or affiliated or associated with such organization, the time at which his membership, affiliation, or association was terminated, the circumstances of such termination, whether such termination was voluntary or involuntary,

or for temporary, deceptive, or spurious purposes, and the degree to which he has separated himself from the activities of that organization or of its leadership;

"(3) such individual's knowledge of the nature and purposes of that organization, and factors relevant thereto, including but not limited to the extent to which the nature and purposes of the organization were publicy known at the time of such membership or association; the extent to which such individual has received instruction or training in such organization; whether such individual has met clandestinely or secretly in cells or units of such organization; if such organization has been found by final order of the Subversive Activities Control Board to be a Communist organization, or if publicly described by the Attorney General, the Director of the Federal Bureau of Investigation, or any Federal agency as totalitarian, Fascist, Communist, or subversive, whether such individual had actual knowledge or notice of such final order or description; and such individual's knowledge of the publications of such organization and the statements of its leaders from which the nature or purposes of such organization may be inferred;

"(4) such individual's commitment to the purposes of such organization, and factors relevant thereto, including but not limited to whether such individual has

made financial contributions to, or collected funds on behalf of, such organization; has attended meetings, classes, or conferences of such organization or those sponsored by it; has participated in any recruiting activities on behalf of such organization; has executed orders, plans, or directives of the organization; has served as agent, messenger, correspondent, organizer, propagandist, agitator, or in any other capacity for or on behalf of such organization; has attended conferences with officers and other members of the organization in the furtherance of any plan or enterprise undertaken by such organization; has advised, counseled, or in any other way imparted information, suggestions, or recommendations to officers or members of such organization or to anyone on its behalf; has participated in any way in the activities, planning, or actions of such organization; has been accepted to his knowledge as one to be called upon for services in support of such organization by its officers or members; has indicated by word or action a willingness to carry out to any degree the plans, objectives, or designs of the organization;

"(5) the degree to which such individual participated in the activities of that organization, and whether, if such individual has ceased such activities, he has continued to meet and associate with any leader or officer

of such organization, or whether he is a sleeper for such organization; and whether, if such individual has limited his activities, he has done so according to a plan of such organization, or for the purpose of concealing his membership or activities therein; and

"(6) based upon what such individual has done or said, and all other relevant facts, including but not limited to the foregoing considerations, his intent to assist, directly or indirectly, and by whatever means, in achieving the ends or ultimate purposes of such organization; and whether the evidence relating to the associations of such individual with such organization would be such as to support an inference that he is at common law a co-conspirator with it or any member or members thereof for any purpose.

"SEC. 407. (a) For the purposes set forth in subsection (a) of section 406, the authority of the President further includes, but shall not be limited to, inquiries and criteria of one or more of the following categories relating to any such individual who is the subject of clearance:

"(1) The commission of, or attempt, conspiracy, solicitation, or preparation to commit, sabotage, espionage, sedition, insurrection, or treason.

"(2) Advocacy of the use of force and violence, or any unlawful means, to overthrow or alter the consti-

tutional form of government of the United States or of any political subdivision, possession, or territory thereof, or to obstruct the execution or enforcement of any Federal law, or to compel or restrain governmental action to effect any political, economic, or social change.

"(3) Organizing, conspiring to organize, aiding or abetting, or active participation in, any unlawful activity to advance any cause, demonstration, or protest in opposition to the execution of any law or of any policy or practice of the Government of the United States authorized by law, relating to the defense or security of the United States, Defense Department procurement of personnel, services, or supplies, the raising and support of armies, or the employment of the Armed Forces of the United States.

"(4) Advocacy of, conspiring to organize, aiding or abetting, or active participation in, any activity in violation of law, Federal or State, and punishable by imprisonment, for the purpose of advancing any Communist, Marxist, Marxist-Leninist, revolutionary socialist, anarchist, nihilist, Nazi, Fascist, or other political or ideological cause, or for the purpose of executing any plan, program, or activity, whether or not pursuant to a general or specific directive or recommendation, of any Communist, Marxist, Marxist-Leninist, revolutionary

socialist, anarchist, nihilist, Nazi, or Fascist party or organization, or of any member, leader, organizer, employee, or agent thereof.

"(5) Establishing or continuing a sympathetic association with a saboteur, spy, insurrectionist, seditionist, traitor, or any leader, employee, organizer, or officer of any subversive organization, or with an espionage agent or other secret representative of a foreign nation whose interests may be inimical to the United States, without satisfactory explanation and under such circumstances and of such nature as to raise a reasonable doubt that the association is for innocent or lawful purposes.

"(6) Such substantial evidence of the individual's adherence or commitment to any Communist, Marxist, Marxist-Leninist, revolutionary socialist, anarchist, nihilist, Nazi, Fascist, or any other ideology which would destroy the constitutional system of government of the United States, as creates a reasonable doubt that such individual is reliable or trustworthy to engage in a sensitive position, place, or area of employment in a defense facility or to have access to classified information.

"(7) Service as secret agent or employee, or as a propagandist, courier, or messenger for any foreign government or any foreign organization which is Communist or Communist controlled.

"(8) Giving of any money, property, or thing, or the conduct of any activity or service, which is of aid, comfort, or assistance to any foreign government, group, or association engaged in armed conflict with the United States, without satisfactory explanation and under circumstances from which it may reasonably be inferred that a purpose of such activity is to impede or interfere with the operation and success of the Armed Forces of the United States, or to advantage any foreign government, group, or association and to prejudice the security interests of the United States.

"(9) Inciting hostilities or conflicts against the United States or against any foreign power or government friendly to the United States which may tend to involve the United States in hostilities or to impair the security of the United States.

"(10) Any publication, orally or in writing, or any overt act, conduct, or course of conduct, indisputably odious, shocking, and offensive to the community of citizens of the United States which demonstrates, and which may reasonably be determined under the circumstances to be intended to demonstrate, a fixed and settled hatred and contempt for, disloyalty to, and estrangement from, the form or constitutional system of government of the United States.

"(11) To broadcast, or to solicit another to broadcast, by radio or television, or to disseminate or publish or solicit another to disseminate or publish in writing or by visual or pictorial representation, any false statement of fact, with knowledge of its falsity or with reckless disregard of the truth, and which, under the circumstances, has the effect of bringing the Armed Forces of the United States, the Department of Defense, or the Government of the United States into disrepute, hatred, or contempt, with the intent to promote or advance the interests of any Communist power or organization or to promote or advance the interests of any foreign power or organization engaged in armed conflict with the United States and to prejudice the interests of the United States.

"(12) Performing or attempting to perform any duty or employment or otherwise acting so as to serve the interests of another government in preference to the interests of the United States.

"(13) Refusal, in the course of any investigation for the purposes of this title, to answer any inquiry relating to any matter or any question with respect to which such individual has previously refused to testify upon the ground of self-incrimination or upon any other grounds, in any authorized inquiry relating to subversive activities conducted by a congressional committee, Federal court,

Federal grand jury, or other duly authorized Federal agency, as to any question relating to the subversive activities of the individual involved or others.

"(14) Any deliberate misrepresentation, falsification, or omission of material facts from a personnel security questionnaire, personal history statement, or similar document.

"(15) Intentional unauthorized disclosure to any person of classified information, or willful violation or disregard of security regulations.

"(16) Recurrent and serious, although unintentional, violations of security regulations, or recurrent and serious, although unintentional, unauthorized disclosures of classified information.

"(17) The presence of a spouse, parent, brother, sister, or child in a nation whose interests may be inimical to the interests of the United States or in satellites or occupied areas of such a nation, under circumstances permitting coercion or pressure to be brought on the individual through such relations, or any other facts or circumstances which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure likely to cause action contrary to the national defense or security interests.

"(18) Criminal or infamous conduct, homosexual perversion, drug addiction or habitual use of drugs to excess, habitual use of intoxicants to excess, an adjudication of insanity or treatment for serious mental or neurological disorder without satisfactory evidence of cure, or any behavior, association, fact, activity, or condition which tends to establish reasonable doubt that the individual is reliable or trustworthy for employment in the production and services or for access to information to be protected pursuant to the provisions of this title.

"(b) In determining the significance to be given for the purposes of this title to the findings with respect to the aforesaid inquiries and criteria, consideration shall be given to—

"(1) the recency of any activity, fact, or condition;

"(2) its frequency or recurrence;

"(3) its nature, seriousness, and significance in relation to other findings and in relation to the employment and level of clearance at issue;

"(4) any credible explanation such individual may offer;

"(5) the general reputation of the individual with regard to relevant characteristics at issue; and

"(6) any other fact on which a rational and fair determination may be based.

"PRIVACY OF INQUIRIES AND PROCEDURES

"SEC. 408. So far as may be expedient and consistent with the objectives and purposes of this title, inquiries and procedures that may involve or evoke information of a derogatory nature relating to any individual or organization shall be conducted with due regard for the protection of such individual or organization from unfair publicity or unjust injury. Under such regulations as the President may prescribe, members of the general public may be denied access to the whole or any part of the proceedings and hearings conducted pursuant to the provisions of this title.

"OBSTRUCTION OF INQUIRY OR PROCEEDINGS

"SEC. 409. In the course of any inquiry, investigation, proceeding, or hearing to determine the eligibility of any individual for employment in a sensitive position, place, or area of employment in any defense facility or for access to classified information, whether or not on review of any such employment or access authorization previously granted, the willful refusal of any individual to answer any relevant inquiry directed to him, or the giving of any willfully false, misleading, or evasive response or testimony on any relevant subject, may be considered sufficient, in the absence of satisfactory explanation, to justify a refusal further to process any such application unless compliance is made, or to

justify denying, suspending, or revoking any such employment or access authorization. Should a refusal further to process any such application be made, or should any access authorization be denied, suspended, or revoked for any such reason, the individual adversely affected shall be entitled on request to a review of such action and a hearing thereon as the President by regulation shall provide.

"SUMMARY DENIAL OF ACCESS AUTHORIZATION

"SEC. 410. The measures instituted or regulations issued by the President pursuant to this title may operate summarily to deny, suspend, or revoke any individual's employment in a defense facility or access to classified information, provided that (1) he shall be notified in writing of the reasons for the action taken against him within thirty days from the time such action is taken, except that the furnishing of such statement of reasons may be postponed, from time to time, for good cause, but shall not be postponed for a period in excess of ninety days from the time such action is taken, and (2) such individual, if he so requests, shall be given a hearing thereon in accordance with applicable procedures set forth in section 411 of this title.

"HEARING PROCEDURES

"SEC. 411. (a) Except as provided in subsection (e) of this section, an individual's employment in any defense facility or access to classified information may not be finally

denied, suspended, or revoked unless such individual (hereafter in this title referred to as 'applicant') has been given—

"(1) a written statement of reasons for the denial, suspension, or revocation stated as comprehensively and detailed as the national security permits;

"(2) an opportunity, after he has replied in writing within a reasonable time under oath or affirmation in specific detail to the statement of reasons, for a personal appearance at which time he may present evidence in his own behalf;

"(3) a reasonable time to prepare for the proceeding;

"(4) the opportunity to be represented by counsel; and

"(5) a written notice advising him of final action, which notice, if final action is adverse, shall specify either the finding has been for or against him with respect to each allegation in the statement of reasons.

"(b) The applicant shall be afforded an opportuinty to cross-examine persons who have made oral or written statements adverse to the applicant relating to a controverted issue except that any such statement may be received and considered without affording such opportunity if—

"(1) the head of the department supplying the statement certifies that the person who furnished the informa-

tion is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his identity would be substantially harmful to the national interest; or

"(2) the head of the department concerned or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency involved as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and the head of the department or such special designee has determined that failure to receive and consider such statement would, in view of the level of clearance sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (A) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (B) due to some other cause determined by the head of the department to be good and sufficient.

Nothing contained in this title shall be deemed to support a claim by an applicant to inspect or have access to the investigative reports of any agency of the Government.

"(c) Wherever procedures under paragraphs (1) and

(2) of subsection (b) of this section are used, the applicant shall be given a summary of the information which shall be as comprehensive and detailed as national security permits, appropriate consideration shall be accorded to the fact that the applicant did not have an opportunity to cross-examine such person or persons, and a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

"(d) Records compiled in the regular course of business or other physical evidence, other than investigative reports, may be received and considered—

"(1) without authenticating witnesses but subject to rebuttal, provided that such information has been furnished to the department concerned by an investigative agency pursuant to its responsibilities in connection with assisting the head of the department concerned with safeguarding defense facilities and classified information pursuant to this title; or

"(2) when relating to a controverted issue and which, because they are classified, may not be inspected by the applicant, provided that (A) the head of the department concerned or his special designee for that purpose has made a preliminary determination that such physical evidence appears to be material, (B) the head of the department concerned or such designee has made a

determination that failure to receive and consider such physical evidence would, in view of the level of access sought, be substantially harmful to the national security, and (C) to the extent that the national security permits, a summary or description of such physical evidence is made available to the applicant.

In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency involved shall be considered. In such instances a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

"(e) Nothing contained in this title shall be deemed to limit or affect the responsibility and powers of the head of a department of Cabinet rank to deny, suspend, or revoke access to a classified military project or to classified information if the security of the Nation so requires when such head of the department personally determines that the procedures prescribed in sections 410 and 411 of this title cannot be invoked consistently with the national security, and such determination shall be conclusive. Such authority may not be delegated.

"TRAINING OF ADMINISTRATIVE PERSONNEL

"SEC. 412. Investigative personnel, screening or hearing officers, counsels, examiners, and members of boards, assigned

or authorized for the administration or execution of the regulations issued by the President pursuant to this title shall be specially trained and qualified for their duties as such, and shall be knowledgeable on the subject of the origin and history of Communist and other subversive organizations, domestic and foreign, their diversity and identification, leadership, organizational techniques, conflict doctrines, tactics, and strategy.

"REIMBURSEMENT FOR LOSS OF EARNINGS

"SEC. 413. The President may, in accordance with such regulations as he may prescribe, provide for the reimbursement of all or any part of an applicant's net loss of earnings resulting directly from the suspension, denial, or revocation of employment in any defense facility, or any facility to which classified information has been released, if such applicant, at the time of such suspension, denial, or revocation, was employed in any such facility and if, at a later time, it has been determined that (1) the applicant is eligible for such employment or access, and (2) after considering all of the facts and circumstances under which the suspension, denial, or revocation occurred, it is fair and equitable that the United States, rather than the applicant or his employer, bear the loss for which reimbursement is to be made. Reimbursement may not exceed the difference between the amount the applicant would have earned as an employee of the

same employer had he continued in the same position as that held at the time of suspension, denial, or revocation and his interim earnings during the period commencing on the date of suspension, denial, or revocation and ending with the date of giving notice to the applicant by regular first-class mail addressed to his last known address of his eligibility for employment or access authorization. Due regard shall be given to the duty of the applicant to minimize damages during the period of any such suspension, denial, or revocation, by reasonably seeking and accepting other employment for which he may be qualified.

"COMPULSORY PROCESS

"SEC. 414. (a) Under such regulations as the President my prescribe, the President (or his designee for such purpose) shall have power to issue and, in his discretion for good cause shown, may issue, process to compel witnesses to appear and testify or produce evidence at any designated place and at any stage of any inquiry, investigation, or proceeding entered upon pursuant to the provisions of this title. Any process so issued may run to any part of the United States and its possessions, including the Commonwealth of Puerto Rico. In any such inquiry, investigation, or proceeding, the applicant may be called by the Government to testify as a witness as of cross-examination. No person, on the ground or for the reasons that testimony or evidence, documentary or

otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, shall be excused from testifying or producing documentary evidence, but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he, under compulsion as herein provided, may testify, or produce evidence, documentary or otherwise, nor shall testimony or evidence, so compelled, nor any fact or information which may be discovered as a result of such testimony or evidence, be used as evidence in any criminal proceeding against him in any court; but no natural person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying. Any person who willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify or produce evidence in obedience to any process duly issued under this section, shall be fined not less than $500 nor more than $5,000, or imprisoned not more than two years, or both. Upon certification by the President (or his designee) concerning any such neglect, refusal, or failure by any person, to the United States attorney for any judicial district in which such person resides or is found, the United States attorney shall bring the matter before the grand jury for its action.

"(b) The fees and expenses of witnesses subpenaed or called by or on behalf of the applicant or any intervening or

interested party shall be borne by the applicant or such party excepting that the President may, in accordance with such regulations as he shall prescribe, provide that such fees and expenses shall, under certain equitable circumstances and in the interests of justice, be borne in whole or in part by the United States. Witnesses subpenaed or called to testify or produce evidence at any inquiry, investigation, or proceeding are authorized travel expenses and per diem as provided by law for witnesses in courts of the United States.

"JURISDICTION OF COURTS

"SEC. 415. (a) In any case where a person's employment in a defense facility, or access to classified information, has been denied, suspended, or revoked, pursuant to this title, or by reason of any agreement between such person's employer and an agency or officer of the United States responsible for the safeguarding of any such facility or information, or by reason of any action taken by such employer in concert with such agency or officer of the United States, no court of the United States shall have jurisdiction at any time to issue any restraining order or temporary or permanent injunction having the effect of granting or continuing such employment or access. No court of the United States shall have jurisdiction of any action or proceeding on the complaint of any person adversely affected by the enforcement, execution, or application of the provisions of this title,

except after exhaustion of the administrative remedies authorized or provided pursuant to the provisions of this title.

"(b) The authority of the President under this title includes the right to seek in any Federal court a temporary or permanent injunction, restraining order, or other order against any facility, or the management thereof, or against any other person, to prevent the employment in or access to any defense facility or access to classified information by any individual whose employment in or access thereto has been suspended, denied, or revoked pursuant to the provisions of this title.

"FACILITIES IMPORTANT TO THE NATIONAL DEFENSE

"SEC. 416. With a view toward the maintenance of essential production and the security of the United States, the President shall develop and execute, with the advice and assistance of appropriate Federal agencies, and under such regulations as he may prescribe, programs and measures to protect facilities within the United States, and its territories and possessions, which are of importance to defense mobilization, defense production, and the essential civilian economy, against sabotage, espionage, acts of subversion, and other destructive acts and omissions. These programs and measures shall include—

"(1) the development and promulgation of standards of security to be applicable to the foregoing facilities

which shall as far as practicable accommodate differences in degrees and types of security required, different categories of facilities, different security ratings, and such other considerations as may be pertinent;

"(2) the development of security measures in consultation with the representatives of industry, trade associations, labor organizations, professional security associations, and other technically qualified persons; and

"(3) the furnishing of advice and assistance to the management or the owner of such facility with respect to administering and executing a security program therefor.

"ADMINISTRATIVE PROCEDURE ACT

"SEC. 417. The Administrative Procedure Act, as amended (5 U.S.C. 1001 et seq.), shall not apply to the use or exercise of any authority granted by this title.

"SEPARABILITY OF PROVISIONS

"SEC. 418. If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remaining provisions of this title, or the application of such provision to other persons or circumstances, shall not be affected thereby."

(b) Paragraph (7) of section 3 of such Act is amended to read as follows:

"(7) The term 'facility' means any manufacturing,

producing, or service establishment, enterprise, or legal entity, any plant, factory, industry, public utility, mine, laboratory, educational institution, research organization, railroad, airport, pier, waterfront installation, vessel, aircraft, vehicle, or any part, division, department, or activity of any of the foregoing."

(c) Paragraph (17) of section 3 of such Act is amended to read as follows:

"(17) A person, though not a member, shall be deemed 'affiliated' with or an 'affiliate' of an organization when there exists between such person and the organization such a close working alliance or association that the conclusion may reasonably be drawn that there is a mutual understanding or recognition between such person and organization that the organization can rely and depend upon such person to cooperate with it and to work for its benefit for an indefinite future time. A practice of giving or loaning money or any other thing of value, or of providing security for the repayment of any such loan, to any organization, other than by a commercial bank or lending institution in the usual course of business, shall create a rebuttable presumption of affiliation with such organization. Nothing in this paragraph shall be construed as an exclusive definition of affiliation."

SEC. 2. (a) Section 5 of the Internal Security Act of 1950 is amended to read as follows:

"EMPLOYMENT OF MEMBERS OF COMMUNIST-ACTION ORGANIZATIONS

"SEC. 5. (a) When there is in effect a final order of the Board determining any organization to be a Communist-action organization it shall be unlawful for any purposive member of such organization, with knowledge or notice of such final order of the Board—

"(1) to hold any nonelective office or employment under the United States; or

"(2) knowingly to be employed in the performance of any classified project, production, or service in any facility; or knowingly to be employed in any position, place, or area of employment determined by the Secretary of Defense to be sensitive pursuant to the provisions of section 403 of this Act; or

"(3) to hold employment as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, or organizer with any labor organization, as that term is defined in section 2(5) of the National Labor Management Relations Act, 1947, as amended (29 U.S.C. 152), or to represent any employer in any manner of proceeding arising or pending under that Act.

"(b) For the purposes of this section—

"(1) The term 'purposive member' means any mem-

ber of a Communist-action organization who (A) has knowledge or notice of the purpose of the world Communist movement as set forth in section 2 of this Act, (B) has knowledge or notice that such organization is substantially directed, dominated, or controlled by a foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this Act, and operates primarily to advance the objectives of the said world Communist movement, and (C) having such knowledge or notice has remained or becomes a member of such Communist-action organization.

"(2) The term 'classified' has the meaning assigned to such term by paragraph (3) of section 402 of this Act.

"(c) Upon the trial of any indictment against any member of a Communist-action organization for a violation of the provisions of subsection (a) of this section, it shall be sufficient evidence, prima facie, that such person has knowledge or notice (1) of the purpose of the world Communist movement as set forth in section 2 of this Act, (2) that such organization is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this Act, and operates primarily to advance the objectives of said world Communist movement, upon due

proof that such person has received a copy of sections 2 and 3 of this Act and a statement, oral or written, informing him that such organization has been determined by final order of the Subversive Activities Control Board to be a Communist-action organization."

(b) Subsection (k) of section 13 of such Act is amended to read as follows:

"(k) When any order of the Board issued under subsection (g), (h), (i), or (j) of this section becomes final under the provisions of section 14(b) of this title, the Board shall publish in the Federal Register the fact that such order has become final."

SEC. 3. Section 1 of title II of the Act of June 15, 1917 (50 U.S.C. 191), is amended as follows:

(1) The last paragraph of such section is amended by striking out the period at the end of subparagraph (b) and inserting in lieu thereof a comma and the following: "and with authority for such purposes to deny to any person, or to revoke or suspend any person's authorization for access to or employment on such vessels (foreign or domestic), harbors, ports, and waterfront facilities, pursuant to which the President may extend and apply, to the extent he deems applicable, the procedures, standards, provisions, and regulations authorized and provided by title IV of the Internal Security Act of 1950."

(2) At the end of such section add the following new paragraph:

"In any case where a person's employment or access with respect to any such vessel, harbor, port, or waterfront facility has been denied, suspended, or revoked, pursuant to the preceding paragraph, or by reason of any agrement between such person's employer and an agency or officer of the United States responsible for the safeguarding of the foregoing vessels, harbors, ports, and facilities, or by reason of any action taken by such employer in concert with such agency or officer of the United States, no court of the United States shall have jurisdiction at any time to issue any restraining order or temporary or permanent injunction having the effect of granting or continuing such employment or access. No court of the United States shall have jurisdiction of any action or proceeding on the complaint of any person adversely affected by the enforcement, execution, or application of the provisions of the preceding paragraph, except after exhaustion of the administrative remedies authorized or provided under such preceding paragraph."

Certain questions were propounded to the Department of Defense with respect to the proposed revision, and the reply follows:

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

ADMINISTRATION

25 JUN 1968

Mr. Chester D. Smith
General Counsel
House of Representatives
Committee on Un-American Activities
Washington, D. C. 20515

Dear Mr. Smith:

This is in reply to your letter of June 19, 1968, requesting information for incorporation in the Committee report to accompany H.R. 15626. For convenience in identifying this information, I have restated each question before the answer.

1. Question: The overall number of clearance requests under the Industrial Security Clearance Program for the years 1966-67. (If the statistics in this aspect were readily available only for 1967 that would suffice for my purposes.)

   Answer: Figures for the calendar year 1966 are not readily available; therefore, I have limited the answer to calendar year 1967. The number of requests received for Government-granted clearances were 212,413; the number of contractor-granted clearances was approximately 301,773, making a total of approximately 514,186.

2. Question: The number of clearances, (1966-67) in all categories, granted involving no derogatory information or question relating to granting of clearances.

   Answer: Again, as in my answer to question 1, above, the calendar year 1966 figures are not readily available and I have limited my answer to calendar year 1967. The total was approximately 484,310.

3. Question: The number of cases requiring adjudicative actions because of the presence of information raising a question pertaining to clearance of an individual.

Answer:

Number of clearance actions containing some adverse information (CY 1967)	29,876
Adverse information of a significant nature forwarded by DISCO to the national level for formal adjudication	715

4. Question: The number of cases adjudicated at the national level and the statistical breakdown as to how many were finally cleared and how many denied clearances.

Answer:

Total number of cases received for formal adjudication (CY 1967)		715
Total number of cases actually adjudicated on a formal basis by ISCRO (CY 1967)		577
Number of clearances granted	290	
Number denied a clearance	129	
Number of cases not processed to a conclusion for other administrative reasons, including but not limited to the following: employment was terminated; applicant refused to appear for a hearing; applicant refused psychiatric examination determined to be pertinent, etc. (A statistical breakdown of this 158 figure is not available).	158	

5. Question: The categorical breakdown of denials, such as unsuitability, hostage-type, homo-type and so on, rate of percentage thereof, such as hostage --.

Answer: As applied to the 577 formal adjudications completed.

Category	No. 129	% 100.0
Criminal Conduct	39	30.2
Sexual Perversion	34	26.4
Psychiatric	31	24.0
Falsification	9	7.0
Intoxication	7	5.4
Financial	4	3.1
Security Violation	3	2.3
Subversion/Association	2	1.6

In response to your question pertaining to the Industrial Defense Facilities Program, there are approximately 3500 facilities presently designated as "defense facilities." Of this number, 20% or 700 are cleared facilities with prime contracts. It is estimated that an additional 10% or 350 have unclassified prime or subcontracts. The balance or approximately 2450 normally have no contractual relationship with the Department of Defense.

With respect to H.R. 15626, and your questions pertaining thereto:

1. Question: Would the Industrial Security Clearance Program be materially expanded over what you now have?

   Answer: There would be no expansion in the number of facilities or personnel clearances included in the Industrial Security Program, as distinguished from the Industrial Defense Program.

2. Question: With regard to the Defense Facilities Program, would our present bill reduce or increase this program?

   Answer: The revised draft of the bill would significantly decrease the number of facilities designated under the Industrial Defense

Program, but would significantly increase the number of individuals subject to security screening. At present there are an estimated 2450 "defense facilities" with which the DoD normally does not have a contractual relationship, leaving an estimated total of 1050 "defense facilities" in which the DoD has a contractual relationship.

As a separate matter, in compliance with Mr. Culver's request, the following information is submitted for inclusion in the transcript of testimony in the appropriate place:

"Mr. Culver. Could you tell me, in numbers in the past fiscal year, how many firms have moved off the standby status into a status where by they would not fall under the sweep of this particular legislation?"

Answer: Mr. Haas: Six.

"Mr. Culver. I would also be interested in the number with regard to the active designation, you know, defense work status, where you have made a change, where they have been on a top secret project one month or producing something of a strategic nature."

Answer: Mr. Haas: In the last fiscal year there were approximately 150 plants deleted from the active list. About the same number was added.

I trust that this information will be of assistance to you. Please advise if you need further information.

Sincerely yours,

Joseph J. Liebling
Director for Security Policy

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